

Tom. L. Lewis  
J. David Slovak  
Mark M. Kovacich  
LEWIS, SLOVAK, KOVACICH & MARR, P.C.  
P.O. Box 2325  
Great Falls, MT 59403  
(406) 761-5595

Monte D. Beck  
Justin P. Stalpes  
Lindsay C. Beck  
BECK & AMSDEN, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, MT 59715  
(406) 586-8700

*Attorneys for Plaintiffs*

RECEIVED

JUN 10 2013

POORE, ROTH & ROBINSON, P.C.  
OUR FILE NO. 1-13395

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW  
COUNTY

GREGORY A. CHRISTIAN; et al.,

Plaintiffs,

v.

BP AMOCO CORPORATION; et al.,

Defendants.

CAUSE NO. DV-08-173 BN

**PLAINTIFFS' BRIEF IN OPPOSITION  
TO ARCO'S MOTION FOR SUMMARY  
JUDGMENT and IN SUPPORT OF  
PLAINTIFFS' CROSS-MOTION FOR  
SUMMARY JUDGMENT ON ARCO'S  
CERCLA PREEMPTION  
AFFIRMATIVE DEFENSES (11<sup>th</sup>-13<sup>th</sup>)**

**INTRODUCTION**

The Comprehensive Environmental Response, Compensation, and Liability Act  
("CERCLA") does not preempt Montana law, which recognizes that restoration damages  
constitute the only remedy that affords a plaintiff full compensation for the contamination of

personal property. CERCLA expressly states that the Act shall not “effect or modify in any way” remedies provided for under state common law.

Defendant Atlantic Richfield Company (“ARCO”) asserts two affirmative defenses contending Plaintiffs’ claims are “barred” by CERCLA, and a third defense alleging Plaintiffs’ claims are “preempted” by federal law. ARCO also filed a motion for summary judgment asking the Court to find as a matter of law that Plaintiffs’ claim for restoration damages is “barred by CERCLA,” in effect arguing CERCLA preempts that remedy.

ARCO relies upon two sections of CERCLA in support of its motion. First, ARCO incorrectly argues that Plaintiffs’ claim constitutes a prohibited “challenge” to the EPA’s remedial action under CERCLA §113(h). Second, ARCO submits that restoration damages are an “inconsistent remedy” under §122(e)(6).

ARCO’s affirmative defenses and motion ignore established case law as well as the savings provisions in CERCLA that expressly preserve Plaintiffs’ right to pursue restoration of damages under state common law. Therefore, §113(h) and §122(e)(6) are inapplicable and irrelevant to Plaintiffs’ claims. The Court should simply rule, consistent with CERCLA’s broad savings clauses, that CERCLA does not affect in any way a private citizen’s right to bring state law claims for property damage. ARCO’s analysis regarding §113(h) and §122(e)(6) is immaterial and irrelevant to Plaintiffs’ claims.

Assuming (incorrectly) that CERCLA does apply, ARCO’s motion still must fail. First, §113(h) does not deprive this Court of jurisdiction because Plaintiffs’ claims are not a “challenge” to ongoing remedial or removal actions. It is well-established that private common law claims for property damage, even when they seek restoration damages for property contamination, are not “challenges.” Section 113(h) was intended to prohibit dilatory polluter

challenges to EPA mandated cleanup. Congress specifically exempted private actions such as the present case from those claims affected by CERCLA § 113(h).

Second, §122(e)(6), the inconsistent remedy provision of CERCLA, does not bar Plaintiffs' restoration claim. Plaintiffs, as innocent, contiguous landowners, are not the type of Potentially Responsible Parties ("PRPs") contemplated by CERCLA. Even if the definition of PRPs could be read to include the Plaintiffs, ARCO ignored the "innocent landowner" and "contiguous landowner" exceptions, which preclude Plaintiffs from being classified as PRPs.

Finally, as held by various courts, restoration damages do not run afoul of CERCLA and cannot be considered either "challenges" or "inconsistent remedies." The purpose of CERCLA is to facilitate environmental cleanup through a federally mandated system. CERCLA sets the floor, not the ceiling, for environmental cleanup. Congress specifically recognized the rights of private property owners to take additional action to hold polluters responsible for the contamination of private property. CERCLA even contemplates situations where private citizens obtain restoration benefits through private litigation. The Court should deny ARCO's motion and grant summary judgment to Plaintiffs, rejecting ARCO's eleventh, twelfth, and thirteenth affirmative defenses as a matter of law.

### **BACKGROUND**

The land where Plaintiffs have built their homes, planted their gardens, raised their children, and resided for years—in some cases, generations—is contaminated with arsenic, lead and other toxic pollutants. These contaminants are ultra-hazardous and remain on Plaintiffs' properties in large amounts. The soil on some of the Plaintiffs' homes has been found to contain concentrations of arsenic that is 100 times higher than the amount that would exist in the soil naturally.

The contamination was placed on Plaintiffs' property by ARCO's operations.<sup>1</sup> ARCO's pollution of Plaintiffs' properties was tortious and in violation of Montana common law, including the law of strict liability, trespass, nuisance, and negligence. Plaintiffs have pursued damages allowed under Montana tort law, including restoration damages. As recognized by the Montana Supreme Court:

If a plaintiff wants to use the damaged property, instead of selling it, restoration of the property constitutes the only remedy that affords a plaintiff full compensation.

*Sunburst School Dist. No. 2 v. Texaco*, 2007 MT 183 ¶ 34, 338 Mont. 259, 165 P.3d 1079 (citing *Roman Catholic Church v. Louisiana Gas*, 618 So.2d 874, 877 (La. 1993)).

Plaintiffs' have testified consistently that the primary goal of this lawsuit is to have their properties cleaned up.<sup>2</sup>

ARCO mischaracterizes and presupposes (for its own benefit) much of the proof Plaintiffs intend to put on at trial. For example, ARCO states that "Plaintiffs intend to convince the jury" of several issues solely related to the EPA. ARCO's Br. at 13. ARCO knows, and can be assured again, that Plaintiffs intend to file motions in limine excluding any evidence of the

---

<sup>1</sup> ARCO has finally admitted that Plaintiffs' properties are contaminated. In order to argue that Plaintiffs' properties are a "facility," as defined by CERCLA, ARCO admits that a hazardous substance has been deposited on the properties. ARCO Br. At 16.

<sup>2</sup> See, e.g. Exh. 1 (Depo. Jack Datres, 108:22-109:4 (January 8, 2013); Depo. Rosemary Choquette, 120:7-10 (January 8, 2013); Depo. Gregory Christian, 90:15-25 (January 28, 2013); Depo. Michelle Christian, 123:14-17 (January 28, 2013); Depo. Duane Colwell, 96:25-97:3 (January 9, 2013); Depo. Shirley Colwell, 69:24-70:4 (January 9, 2013); Depo. Franklin Cooney, 157:21-23 (November 29, 2012); Depo. Victoria Cooney, 83:1-4 (November 29, 2012); Depo. George Coward, 105:3-7 (November 28, 2012); Depo. Viola Duffy, 116:4-6 (January 22, 2013); Depo. Bruce Duxburry, 129:13-15 (January 24, 2013); Depo. Judy Minnahan, 69:9-13 (January 30, 2013); Depo. Linda Eggen, 84:4-8 (February 19, 2013); Depo. Bill Field, 135:19-22 (December 5, 2012); Depo. Edward Jones, 128:21-24 (December 5, 2012); Depo. Robert Phillips, 139:5-9 (December 4, 2012); Depo. Andy Gress, 85:21-23 (January 29, 2013); Depo. Serge Meyers, 168:6-8 (January 23, 2013); Depo. Toni Zimmer, 61:4-8 (November 30, 2012); Depo. Leonard Mann, 95:10 - 12 (February 6, 2013)).

EPA's assessment of the risk to human health and the EPA's chosen remedies. These matters are irrelevant to Plaintiffs' common law strict liability, nuisance, trespass, and negligence claims, but could conceivably be used by ARCO to defend against Plaintiffs' claim for punitive damages, if the Court sees fit. *Sunburst* ¶ 83. Despite ARCO's self-serving presuppositions on Plaintiffs' case-in-chief, the EPA's actions are entirely irrelevant, prejudicial to Plaintiffs, and must be excluded from the entirety of the phase of trial devoted to establishing restoration damages.

### **LEGAL STANDARD: SUMMARY JUDGMENT**

Summary judgment is an extreme remedy and should never be substituted for a trial if a material factual controversy exists. *Hajenga v. Schwein*, 2007 MT 80, & 11, 226 Mont. 507, 155 P.3d 1241. The party moving for summary judgment must demonstrate the absence of genuine issues of material fact. Only then, must the opposing party establish factual issues. *First Sec. Bank v. Jones*, 243 Mont. 301, 302, 794 P.2d 679, 681 (1990). All evidence must be viewed in the light most favorable to the party opposing summary judgment and all reasonable inferences drawn in their favor. *Oliver v. Stimson Lumber*, 1999 MT 328, & 22, 297 Mont. 336, 342, 993 P.2d 11, 16.

### **ARGUMENT**

#### **I. CERCLA Does Not Preempt Plaintiffs' Claims. Therefore, CERCLA Does Not Bar Restoration Damages.**

Although ARCO's motion does not incorporate an analysis of preemption, and even goes so far as to avoid using the term altogether, ARCO incorrectly argues that CERCLA "bars" Plaintiffs' claim for restoration damages. By so arguing, ARCO seeks to persuade the Court that Plaintiffs' claim for restoration damages is preempted by CERCLA. Although ARCO purports to take issue only with Plaintiffs' claim for restoration damages, in effect, ARCO is seeking to

preempt enforcement of the “only remedy that affords plaintiff full compensation.” *Sunburst* ¶ 34.

In order for a federal statute, such as CERCLA, to bar recovery under state law, the federal statute must preempt applicable state law. An analysis of the law of preemption is therefore required. To determine preemption, a court must determine whether Congress expressly or impliedly intended to preempt state law by enacting a federal statute. *Emerson v. Kansas City Southern Ry. Co.*, 503 F.3d 1126, 1129 (10th Cir.2007).

**A. CERCLA Does Not Expressly Preempt Plaintiffs’ Claims.**

“Express preemption occurs when Congress explicitly states in a statute or regulation that state law is superseded.” *In re. California Retail Natural Gas and Electricity Antitrust Litigation*, 170 F.Supp.2d 1052, 1057 (D. Nev. 2001).

Congress did not intend to preempt state law claims for property damage or environmental pollution in passing CERCLA. Quite to the contrary, CERCLA contains three separate savings provisions preserving the right to impose additional liability for the release of a hazardous substance, one of which provides:

Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, **including common law**, with respect to releases of hazardous substances or other pollutants or contaminants. The provisions of this chapter shall not be considered, interpreted, or construed in any way as reflecting a determination, in part or whole, of policy regarding the inapplicability of strict liability, or strict liability doctrines, to activities relating to hazardous substances, pollutants, or contaminants or other such activities.

42 U.S.C. § 9652(d) (emphasis added). The principle purpose of § 9652(d) “is to preserve to victims of toxic waste the other remedies they may have under federal or state law.” *PMC, Inc. v. Sherwin-Williams Co.*, 151 F.3d 610, 617 (7th Cir. 1998) (citing *Beck v. Atlantic Richfield Co.*, 62 F.3d 1240, 1243 n. 8 (9th Cir. 1995)).

Additionally, CERCLA contains a “relationship to other laws” provision, § 114(a), which provides:

[n]othing in this chapter shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State.

42 U.S.C. § 9614(a). Finally, with respect to liability for response costs, § 107(j) provides:

[n]othing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

42 U.S.C. § 9607(j).

Congress took every precaution to ensure that state law claims, such as those filed by Plaintiffs here, would not be affected in any way by CERCLA. It is well-established that the inclusion of the non-preemptive language in these CERCLA provisions makes clear that Congress did not intend to preempt state causes of action. *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 (1983).

Thus, Congress certainly did not expressly preempt Plaintiffs’ state law claims. To the contrary, ARCO’s argument that Plaintiffs’ claim for restoration damages arising out of nuisance, trespass, strict liability, and negligence is barred by CERCLA runs contrary to the express intent of Congress.

**B. CERCLA Does Not Impliedly Preempt Plaintiffs’ Claims.**

In the absence of express preemption, a court may find that a federal statute impliedly preempts state law in two ways. First, if Congress intends that federal law should entirely occupy a particular field, state laws in that field are preempted. *California v. ARC America Corp.*, 490 U.S. 93, 100, 109 S.Ct. 1661, 104 L.Ed.2d 86 (1989). Second, even if Congress does not intend

to occupy the field, a state law may be preempted by federal law to the extent that it actually conflicts with federal law. *Id.* As shown below, CERCLA does not impliedly preempt common-law claims for property damages.

**1. CERCLA Does Not Occupy the Fields of Property Law or Environmental Cleanup**

Congress had no intention of occupying the fields of property law or environmental clean-up by passing CERCLA. Nor did Congress have the intention of precluding state law claims or damages such as those at issue in this case. Various courts have found that Congress did not preempt state laws related to hazardous waste contamination. *See e.g. New Mexico v. General Electric Co.*, 467 F.3d 1223, 1244 (10th Cir.2006) (“Given these saving clauses [cited above], as well as the spirit of cooperative federalism running throughout CERCLA and its regulations, we may safely say Congress did not intend CERCLA to completely preempt state laws related to hazardous waste contamination.”); *Fireman's Fund Ins. v. City of Lodi*, 302 F.3d 928, 941-43 (9th Cir.2002) (“Congress clearly expressed its intent that CERCLA should work in conjunction with other federal and state hazardous waste laws in order to solve this country's hazardous waste cleanup problem.”); *United States v. Colorado*, 990 F.2d 1565, 1575 (10th Cir.1993); *accord Manor Care, Inc. v. Yaskin*, 950 F.2d 122, 125-26 (3d Cir.1991)(Alito, J.).

It cannot be disputed that Congress has not occupied the field of property law as it applies to environmental contamination by passing CERCLA.

**2. Plaintiffs' Claims Do Not Conflict With CERCLA.**

Actual conflict between state and federal law occurs “where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Choate v. Champion Home Builders Co.*, 222 F.3d 788, 792 (10th Cir.2000). For conflict

preemption to apply, the common law remedy must be a “material impediment to the federal action, or thwart [ ] the federal policy in a material way.” *Id.* at 796 (quoting *Mount Olivet Cemetery Assoc. v. Salt Lake City*, 164 F.3d 480, 489 (10th Cir.1998)). “CERCLA does not preempt state law claims in the absence of a conflict between CERCLA and state law.” *Quapaw Tribe of Oklahoma v. Blue Tee Corp.*, 2009 WL 455260 (N.D.Okla.).

CERCLA was enacted in 1980 to ensure the cleanup of contaminated sites and “eliminate threats to human health and the environment posed by uncontrolled hazardous waste sites.” Exh. 2 (EPA PRP Search Manual).

(<http://www.epa.gov/compliance/resources/publications/cleanup/superfund/prpmanual/prp-man-chap1-09.pdf>). CERCLA is best known as setting forth a mechanism to clean up hazardous waste sites under a remediation-based approach. *United States v. Bestfoods*, 524 U.S. 51, 55 (1998). CERCLA's principle aims are to effectuate the cleanup of hazardous waste sites and impose cleanup costs on responsible parties. *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 483 (1996).

“CERCLA sets a floor, not a ceiling.” *New Mexico*, 467 F.3d at 1246. “CERCLA's saving clauses (as well as other CERCLA provisions) undoubtedly preserve a quantum of state legislative and common law actions and remedies related to the release and cleanup of hazardous waste.” *Id.* Demonstrating that Plaintiffs' restoration claims do not conflict with CERCLA, Congress even contemplated the situation where a private party receives funds from a polluter for restoration damages on a site regulated by CERCLA, and precludes that private individual from double recovery of the same costs through a CERCLA action. *See* 42 U.S.C. § 9614(b).

In this case, restoration damages do not stand as an obstacle to Congress' objectives in passing CERCLA. The EPA has required ARCO to remove all arsenic exceeding 250 ppm from

all residential property within the Superfund site. Plaintiffs' common law property damage claims do not make it "impossible" for ARCO to comply with the EPA's requirement. Nor do Plaintiffs' common law claims impede the CERCLA framework or EPA's requirements on site.

While ARCO insists the Plaintiffs' common law damage claim would conflict with ongoing EPA investigation and cleanup, it provides no evidence or analysis to demonstrate how. According to ARCO's retained expert, Richard Bartelt, contamination in the communities of Opportunity and Crackerville did not present a risk and necessitated testing only on a voluntary basis. Richard Bartelt Aff., ¶ 18. To the extent residents of Opportunity and Crackerville requested testing of soil on their properties, the testing was performed, and the remediation required by EPA under CERCLA has already been conducted by ARCO. Id., ¶ 19. As a result of the filing of this lawsuit, ARCO conducted additional sampling on every Plaintiffs' property, and now acknowledges contamination exceeding the regulatory level for arsenic in soil remains on some of the Plaintiffs' properties. ARCO recently proposed remediation on those properties. Id., ¶ 21. Pending resolution of logistical questions, Plaintiffs and ARCO expect that remediation to proceed soon. In fact, ARCO's counsel advised the work could be finished in this construction season. Exh. 3 (email communication).

With respect to groundwater, ARCO has sampled a number of residential wells, and has replaced two on property owned by Plaintiffs in this case. Richard Bartelt Aff., ¶¶ 23-26. With respect to the remainder of the Plaintiffs' properties, ARCO has not performed or proposed any cleanup whatsoever. Plaintiffs' recovery of restoration damages in this case, as authorized by Montana common law, would have no impact whatsoever on any of ARCO's work pursuant to CERCLA.

Under Montana law, property owners can recover restoration damages for cleanup exceeding standards established by regulatory agencies:

Thus, we agree with Sunburst that CECRA's focus on cost effectiveness and limits on health-based standards differ from the factors to be considered in assessing damages under the common law. Nothing in CECRA preempts a common law claim that seeks to recover restoration damages to remediate contamination beyond the statute's health-based standards.

*Sunburst* ¶ 59 (emphasis added). Plaintiffs have cooperated, and will cooperate further, with the limited cleanup required of ARCO by EPA. Montana law affords the Plaintiffs an additional remedy in the form of restoration damages. The Plaintiffs' use of damages awarded to them, following the completion of this case, to perform additional cleanup never contemplated by ARCO nor required by EPA would not conflict with CERCLA.

## **II. CERCLA § 113(h) Does Not Preclude Restoration Damages Plaintiffs' Claims.**

ARCO relies upon CERCLA § 113(h) to argue CERCLA preempts Plaintiffs' claim for restoration damages. In doing so, ARCO invites the Court to engage in an unnecessary analysis of CERCLA. However, even if CERCLA applies (which it does not), ARCO's interpretation of § 113(h) is in error and runs contrary to the clear legislative intent. Congress did not enact §113(h) to serve as a shield against litigation that is unrelated to CERCLA enforcement. *Fort Ord Toxics Project, Inc. v. California E.P.A.*, 189 F.3d 828, 831 (9th Cir. 1999).

### **A. Section 113(h) Precludes Polluter Challenges to Clean-Up Requirements To Avoid Delay; It Does Not Affect Common Law Claims for Property Damage.**

In 1986, Congress passed CERCLA, § 113(h) to prevent polluters from using the courts to stall EPA cleanup efforts at Superfund sites. Section 113(h) deprives federal courts of jurisdiction to hear polluters' "challenges" to EPA removal or remedial actions:

No federal court shall have jurisdiction under Federal law other than under section 1332 of Title 28 (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 9621 of this title

(relating to cleanup standards) to review any challenges to removal or remedial action selected under section 9606(a) of this title[.]<sup>3</sup>

42 U.S.C. § 9613(h). Congress' expressed purpose in enacting § 133(h) was to prevent polluting parties who are financially responsible for clean-up from filing "dilatatory, interim lawsuits which have the effect of slowing down or preventing the EPA's cleanup activities." Exh. 4 (H.R.Rep. No. 253(I), 99<sup>th</sup> CONG., 2<sup>nd</sup> Sess. 266 (1985)).

The Congressional Committee of Conference that drafted the 1986 amendments to CERCLA explained that the "[n]ew section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants." Exh. 5 (H.R. Conf. Rep. No. 99-962, at 224 (emphasis added)). The Senate agreed to this Committee of Conference Report. *Bernice Samples v. Conoco, Inc.*, 165 F.Supp.2d 1303, 1312 (N.D. Florida, 2001) *citing* 132 CONG. REC. 28, 406, 28, 456 (1986). Senator Stafford "who insisted upon stating expressly what all had agreed was their intent," provided additional explanation of the "purpose and meaning" of the provisions in § 113:

The time of review of judicial challenges to cleanups is governed by 113(h) for those suits to which it is applicable. It is not by any means applicable to all suits. For purposes of those based on State law, for example, 113(h) governs only those brought under State law which is applicable or relevant and appropriate as defined under Section 121.<sup>4</sup> In no case is State nuisance law, whether public or private nuisance, affected by 113(h).

*Bernice Samples* at 1312 *citing* 132 CONG. REC. 28, 410 (emphasis added). Senator Mitchell echoed Senator Stafford, explaining that "[s]tate nuisance suits would, of course, be permitted at any time." *Bernice Samples* at *Id.* at 1312 *citing* 132 CONG. REC. at 28, 429.

---

<sup>3</sup> Exceptions 1-5 to §113(h) are inapplicable.

<sup>4</sup> This sentence applies to enforcement actions that require state government standards be incorporated and enforced by the EPA in the CERCLA clean-up and is not applicable here.

The House of Representatives also agreed to the Committee Conference Report on the 1986 CERCLA amendments. Representative Glickman clarified the intended interplay between § 133(h) and state law claims such as those maintained by Plaintiffs here:

Section 113(h) does not affect the ability to bring nuisance actions under State law for remedies within the control of the State courts which do not conflict with the Superfund legislation. The language preserving State nuisance actions in a limited manner is intended to preserve the use of State enforcement authority to compel private party cleanup or to otherwise assure that the State or private party citizens can continue to abate nuisances resulting from hazardous waste disposal when such actions do not conflict with CERCLA.

*Bernice Samples* at 1314 citing 132 CONG. REC. 29, 737 (1986).

Congress' intent could not be clearer or more contrary to ARCO's position. Section 113(h) simply does not affect common law actions for restoration damages. ARCO's belabored interpretation of the text must not convince this Court to enforce a result Congress specifically meant to avoid.

**B. Plaintiffs' State Common Law Claim for Restoration Damage Does Not Constitute A "Challenge to A Remedial Action Selected" under § 113(h) of CERCLA.**

In order to invoke § 113(h) to block Plaintiffs' state law claim for restoration damages, ARCO would have to demonstrate that Plaintiffs' asserted a "challenge" to EPA's "remedial action selected." As shown below, ARCO cannot satisfy this requirement.

In order to preserve state law claims and damages, Congress was careful to circumscribe the effect of § 113(h). The jurisdictional provisions of 113(h) operate to bar only "challenges to removal or remedial action selected[.]" 42 U.S.C. § 9613(h). Challenges are narrowly construed in the context of § 113(h). Claims are interpreted as a "challenge" pursuant to § 113(h) only if the relief sought alters the ROD or terminates or delays the EPA-mandated cleanup. *ARCO*

*Environmental Remediation, LLP (AERL) v. Dept. of Health and Environmental Quality of Montana*, 213 F.3d 1108, 115 (9<sup>th</sup> Cir. 2000).

In *Bernice Samples v. Conoco, Inc.*, a group of landowners brought state law trespass, nuisance, and strict liability claims against corporate defendants for polluting the groundwater with hazardous chemicals. 165 F.Supp.2d 1303. The EPA was simultaneously working to remediate the site. Under each count, plaintiffs sought to recover damages including restoration costs. Like ARCO here, the defendants in *Bernice Samples* argued that plaintiffs' claims constituted a challenge to EPA's cleanup. After conducting a comprehensive analysis of the meaning and history of § 113(h), the *Bernice Samples* court explained:

Plaintiffs' lawsuit does not constitute a "challenge" to the consent decree as that term is used in section 113(h) of CERCLA, 42 U.S.C. § 9613(h). The lawsuit is not an action designed to review or contest the remedy selected by the EPA, prior to implementation; it is not an action designed to obtain a court order directing the EPA to select a different remedy; it is not an action designed to delay, enjoin, or prevent the implementation of a remedy selected by the EPA; and it is not a citizen suit brought pursuant to 42 U.S.C. § 9659.

*Id.* at 1315.

Plaintiffs' right to pursue remediation damages in a manner that will not challenge EPA cleanups is well-recognized. In addressing claims nearly identical to Plaintiffs' here, the *Bernice Samples* court explained:

Defendants argue that Plaintiffs' request for restoration costs, in and of itself, constitutes a challenge to the consent decree. The Court disagrees. As discussed earlier, section 113(h) does not affect a person's right to bring trespass or nuisance actions under state law for remedies within the control of state courts which do not conflict with CERCLA. Moreover, CERCLA does not "affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants." 42 U.S.C. § 9652(d).

*Id.* at 1316.

This holding is consistent with *Stanton Road Associates v. Lohrey Enterprises*, 984 F.2d 1015 (9<sup>th</sup> Cir. 1993). In *Stanton Road*, the district court awarded remediation damages in a chlorinated solvents pollution case brought pursuant to both CERCLA and California state tort law. *Id.* at 1021. The Ninth Circuit disallowed the restoration damages under CERCLA, finding that such damages are recoverable only after a plaintiff has already incurred such costs in cleaning up his property. *Id.* (CERCLA § 107 precludes awards of future response costs). However, the court found that the plaintiff was not prohibited from recovering future costs or repair damages under his state law trespass, negligence and nuisance claims. *Id.* at 1022.

Similarly, in *United States v. Akzo Coatings of America, Inc.*, 949 F.2d 1409, 1455 (1991), the Sixth Circuit held:

CERCLA's legislative history, like the text of the statute itself, indicates that Congress never intended state environmental laws to be ignored or preempted in the selection of federal remedies.

*Id.* The court went on to quote Senator Mitchell's statements in the Congressional Record on the effect of the 1986 CERCLA amendments as follows:

Clearly preserved, for example, are challenges to the selection or adequacy of remedies based on state nuisance law, or actions to abate the hazardous substance release itself, independent of federal response action.

*Id.* quoting 132 Cong.Rec. §17,212 (Oct. 17, 1986).

In *Manor Care, Inc. v. Yaskin*, 950 F.2d 122, 126 (3<sup>rd</sup> Cir. 1991), the court held that directives under New Jersey state law supplemented, rather than conflicted, with a CERCLA action. The court further held:

Manor Care's argument is inconsistent with Congress' clear and strong intent. As discussed above, Congress did not intend for CERCLA remedies to preempt complementary state remedies...

[I]f CERCLA's remedies preempted state remedies for recovering costs of hazardous waste cleanups, § 114(b) (which prevents double recovery) would

make no sense at all. Accordingly, we find no actual conflict between the DEP directives at issue in this case and the CERCLA provisions on which Manor Care relies.

*Id.* at 127.

Like the above cases, Plaintiffs' state law claims here do not present a "challenge" to any potential EPA cleanup at the Superfund site. Indeed, CERCLA is irrelevant to Plaintiffs' common law claims. Plaintiffs do not seek to dictate specific remedial actions that the EPA must undertake. Plaintiffs are not seeking an injunction and are not challenging the CERCLA cleanup. Section 113(h) simply has no bearing on Plaintiffs' claim.

ARCO cites *New Mexico v. Gen. Elec. Co.*, 467 F.3d at 1244, for its argument that Plaintiffs' claim for restoration damages is a challenge, and therefore preempted by CERCLA. That case is factually dissimilar and distinguishable from the present case. In *Gen. Elec.*, the State of New Mexico and the EPA, along with General Electric, had been working together for years on the CERCLA mandated cleanup of a facility used to manufacture nuclear weapons components and aircraft engines. The State of New Mexico worked closely with the US Government on the cleanup.

In addition to affording New Mexico with a federally-mandated cleanup, CERCLA also allows the state to bring an action, pursuant to § 9607(a)(4)(C), for damages to natural resources (called an NRD claim). *Gen. Elec.*, 467 F.3d at 1234. New Mexico did so, but also brought common law claims for trespass, nuisance, and negligence. *Id.* The court found that New Mexico could not maintain any of these private common law claims, not because of CERCLA, but because they did not survive under state law. New Mexico's trespass action was not brought to protect private property, but the state's broader sovereign and public trust, which does not qualify under the state's own trespass law. *Id.* at 1237-38. The nuisance claims were illusory

because New Mexico state law limited the available remedy to injunctive relief. *Id.* at 1238. Finally, New Mexico's negligence law would not entitle the state to restoration damages. *Id.*

Therefore, the sole remaining claim in New Mexico's lawsuit (a CERCLA NRD claim) was found to conflict with and challenge the existing CERCLA remedy for remediation. *Id.* at 1247-1249. The court recognized that New Mexico brought the suit to supplant the ROD with CERCLA NRD damages. *Id.* at 1250. This constituted a challenge under §113(h). *Id.*

This case is entirely different. Here, Plaintiffs bring allowable state law claims that do not have illusory remedies and for which the Plaintiffs have solid legal standing under well-established state law claims. Unlike the plaintiff in *Gen. Elec.*, Plaintiffs have not brought any CERCLA claims, nor do they challenge any portion of EPA's remediation.

Plaintiffs' state law claims for strict liability, nuisance, trespass, and negligence seeking monetary restoration damages do not seek to alter, hinder, or slow any portion of the EPA ordered cleanup. Therefore, Plaintiffs' claims are not a "challenge" under §113(h).

### **III. CERCLA § 122(e)(6) Does Not Apply to Plaintiffs' Claims.**

ARCO also argues that Plaintiffs are barred from pursuing their state law claim for restoration damages by CERCLA's "inconsistent response" action section (§ 122(3)(6)). ARCO submits that Plaintiffs are Potentially Responsible Parties (PRPs), and Plaintiffs' claims for monetary restoration damages qualify as an "inconsistent response" to CERCLA. ARCO's argument must be rejected for three reasons.

First, as demonstrated above, CERCLA does not preempt Plaintiffs' common law claims for nuisance, trespass, negligence and strict liability. Section 122(e)(6) cannot preclude Plaintiffs from recovering for restoration damages because it does not apply and is entirely irrelevant to the case at bar.

Second, even if § 122(e)(6) applied, which it does not, Plaintiffs, as private landowners, are not the type of PRPs contemplated by CERCLA. Indeed, every case cited by ARCO relates to successor liability or contribution situations in which parties have inherited a business or have otherwise become involved in the polluting business, and are subsequently named PRPs. Further, in every case cited by ARCO for the proposition that Plaintiffs are PRPs, the claim was made pursuant to CERCLA, not state law.

Even if the definition of PRP could be read to include the Plaintiffs, ARCO ignores the “innocent landowner” and “contiguous landowner” exceptions. To determine CERCLA liability, courts recognize an “innocent landowner” exception for landowners who were not responsible for polluting the subject property. *See* CERCLA §§ 107(b)(3), 101(35); *Westfarm Associates Ltd. Partnership v. Washington Suburban Sanitary Comm’n*, 66 F.3d 669, 682 (4th Cir.1995). Further, CERCLA § 107(q) protects property owners of “contiguous” property if the landowner did not cause, contribute or consent to the release of hazardous substances. Therefore, even if CERCLA applied, which it does not, the “innocent landowner” and “contiguous landowner” exceptions would relieve Plaintiffs of the burden of being PRPs.

Finally, even if Plaintiffs’ were considered “PRPs,” Plaintiffs’ state law restoration claims are not “inconsistent with” EPA’s final remedy. Therefore, §122(e)(6) does not apply.

Under CERCLA § 122(e)(6), Congress forbade remedial actions by PRPs that are inconsistent with the ROD without EPA’s approval. “This provision is to avoid situations in which the PRP begins work at a site that prejudices or may be inconsistent with what the final remedy should be or exacerbates the problem.” *Interfaith Comm. Org. v. Honeywell Intern, Inc.*, 2007 WL 576343 \* 3 *quoting* 132 CONG. REC. S14919 (daily ed. Oct. 3, 1986). This section is part of CERCLA’s overall objective to “promptly remediate polluted sites to bring land back to

its original uncontaminated condition,” and impose liability on “the parties responsible for the polluted condition of the land.” *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 2003 WI 108, 264 Wis. 2d 60, 92, 665 N.W.2d 257, 273.

In this case, Plaintiffs’ restoration claims are not inconsistent with the EPA remedy and would not exacerbate the pollution issue in Opportunity and Crackerville. To the contrary, the claims seek to eliminate pollution on Plaintiffs’ personal property. Plaintiffs’ remedy is not inconsistent because CERCLA sets a floor, not a ceiling. As discussed above, CERCLA contemplates additional state actions for cleanup that may exceed the EPA mandated action for a property. Without the requisite interference, ARCO cannot raise the “inconsistent response” action provision § 122(e)(6) in its defense.

In *Sunburst*, the defendant raised an identical argument, contending the plaintiffs could not recover restoration damages because any restoration work later performed would require the approval of the Montana Department of Environmental Quality (“DEQ”) pursuant to the terms of Montana’s Comprehensive Environmental Cleanup and Responsibility Act (“CECRA”). *See* Exh. 6 (Tex. App. Br. at 33) Like ARCO here, Texaco offered no proof to suggest the regulatory agency charged with protecting the environment would seek to prevent private parties from using compensatory damages to clean up their own properties. Despite Texaco’s observation that CECRA generally requires parties performing remediation at a regulated site to seek regulatory approval, the Montana Supreme Court found nothing in the statute which precluded or preempted a common law restoration damage claim. *Sunburst*, ¶ 59.

Because Plaintiffs here are not PRPs and their monetary damage claims are not inconsistent and would not exacerbate the problem, Plaintiffs’ claims are not preempted by CERCLA § 122(e)(6).

### CONCLUSION

CERCLA does not preempt or even apply to Plaintiffs' claims arising from Montana common law. Plaintiffs' claims for monetary restoration damages do not challenge EPA's remediation in any way. Further, their claims are not inconsistent with EPA's remediation, will not slow or halt EPA's actions, and do not exacerbate the arsenic and other heavy metal contamination that is prevalent on Plaintiffs' properties. For the reasons set forth above, ARCO's Motion for Summary Judgment on Plaintiffs' Claim for Restoration Damages should be denied, and the Court should reject ARCO's eleventh, twelfth, and thirteenth defenses as a matter of law.

DATED this 7<sup>th</sup> day of June, 2013.

LEWIS, SLOVAK & KOVACICH, P.C.  
and  
BECK & AMSDEN, PLLC

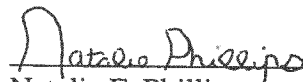
By:   
JUSTIN STALPES, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 17<sup>th</sup> day of June, 2013, I served by first class mail, postage prepaid, a true and legible copy of the foregoing **PLAINTIFFS' BRIEF IN OPPOSITION TO ARCO'S MOTION FOR SUMMARY JUDGMENT and IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT ON ARCO'S CERCLA PREEMPTION AFFIRMATIVE DEFENSES (11<sup>th</sup>-13<sup>th</sup>)** upon the following:

John P. Davis  
Patrick Sullivan  
POORE, ROTH & ROBINSON, P.C.  
P.O. Box 2000  
Butte, MT 59702

Michael J. Gallagher  
Shannon Wells Stevenson  
Jonathan W. Rauchway  
Emily L. Droll  
Mark Champoux  
DAVIS, GRAHAM & STUBBS, LLP  
1550 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202

  
Natalie F. Phillips  
Registered Paralegal

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al., )  
Plaintiffs, )  
vs ) CAUSE NO. DV-08-173  
BP AMOCO CORPORATION, et al., )  
ATLANTIC RICHFIELD COMPANY, et al., )  
Defendants )

DEPOSITION OF JACK DATRES

Taken at:

Poore, Roth & Robinson, P.C.  
1341 Harrison Avenue  
Butte, Montana

January 8, 2013  
1 00 p.m.

JACK DATRES

CHRISTENSEN vs. BARRETT

January 8, 2013  
Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

JUSTIN STALPES  
Attorney at Law  
BECK & AMSDEN, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, Montana 59715

FOR THE DEFENDANTS:

LEE BRUNER  
Attorney at Law  
POORE, ROTH & ROBINSON, P.C.  
1341 Harrison Avenue  
Butte, Montana 59701

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

JACK DATRES

CHRISTENSEN vs. BARRETT

January 8, 2013  
Page 3

INDEX

PAGE

JACK DATRES:

Examination by Mr. Bruner..... 5  
Examination by Mr. Stalpes..... 117  
Further Examination by Mr. Bruner..... 118  
Further Examination by Mr. Stalpes..... 119

INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED
1	Warranty Deed to Jack and Julie Datres, 3/2/1995	15
2	Aerial photograph of 511 Stewart	16
	Warranty Deed from Julie Datres to Jack Datres, 10/24/2001	22
4	Policy of Title Insurance, 3/2/1995	22
5	Wells Fargo Disclosure Statement, 12/21/2001	23
6	Appraisal of 511 Stewart for Estate of Bert Wicke, 7/5/1994	42
7	Appraisal of 511 Stewart for Norwest Bank, 4/24/1997	42
8	Appraisal of 511 Stewart for Norwest Bank, 11/3/1998	43

3

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

JACK DATRES

CHRISTENSEN vs. BARRETT

January 8, 2013  
Page 4

9	Appraisal of 511 Stewart for Wells Fargo Bank, 11/30/2001	44
10	Letter to Jack Datres from Montana Bureau of Mines and Geology, 5/11/2011	81
11	Letter to Jack Datres from Anaconda-Deer Lodge County w/building permits, 6/21/2004	89
12	Anaconda Area Residential Soil Sampling 2002	90
13	Letter from Dr. Robert Borschein, Ph.D., 7/27/1993	91
14	Letter to Opportunity residents from Atlantic Richfield Company	91
15	Soil Samples	94
16	Opportunity Citizens Protection Association mailing list	96
17	Opportunity Citizens Protection Association, "Your Help is Needed"	97
18	Thank you from Opportunity Citizens Protection Association	100
19	Five black-and-white photographs of 511 Stewart	115
20	Packet of color photographs of 511 Stewart	115
21	Eight color photographs of 511 Stewart	115

NORDHAGEN COURT REPORTING

1-800-823-2083

PLAINTIFF'S  
EXHIBIT

1

1 Q. Dr. Robison is a dermatologist. And I don't know  
2 the name I used, but --

3 THE COURT REPORTER: Sorenson.

4 Q. (By Mr. Bruner) That guy is an internal medicine  
5 doctor. So the individual you spoke with was Dr. Neal  
6 Rogers, the allergist, correct?

7 A. Yes.

8 Q. Aside from that conversation with Dr. Rogers,  
9 have you seen any other health care providers for any  
10 concerns that you have relating to exposure to  
11 environmental contamination?

12 A. No.

13 Q. Do you still have a mortgage on your property,  
14 still making payments?

15 A. Yes.

16 Q. Are you a smoker, Jack?

17 A. No.

18 Q. Have you ever been?

19 A. No.

20 Q. Did you ever use any other tobacco products?

21 A. Yes.

22 Q. Do you chew?

23 A. Yes.

24 Q. Do you still do that?

25 A. Very seldom.

1 Q. Good. How long would you say you used it?

2 A. Oh, ten years.

3 Q. And how long ago did you almost quit?

4 A. It's been about five years now.

5 Q. Good. Do you take any prescription medications?

6 A. Yes.

7 Q. What, generally?

8 A. Testosterone.

9 Q. Okay. Anything else?

10 A. No.

11 Q. How did you come to find out about this lawsuit?

12 A. From the community talking.

13 Q. Why did you decide to join?

14 A. It raised concerns for me about what we were  
15 really living in, and we were hoping to find out exactly  
16 what we were living in.

17 Q. So is it fair to say you saw it as a mechanism to  
18 learn more about potential contamination in the area and  
19 specifically your property, what might be going on there?

20 MR. STALPES: Objection; leading.

21 THE WITNESS: Yes.

22 Q. (By Mr. Bruner) At the end of this lawsuit, what  
23 do you hope the result is?

24 A. Oh, I'd like to see it restored back to what it  
25 originally was.

1 Q. And when you say "originally was," what do you  
2 mean?

3 A. I guess back to the levels of arsenic and that to  
4 where it was before the smelter was underway

5 Q. So back before the -- I don't know when the  
6 smelter started. 1880s maybe?

7 A. I have no idea.

8 Q. But back before they started smelting?

9 A. Yes.

10 Q. Okay. What else?

11 A. I don't think I have any other concerns.

12 Q. If it could be restored to a level that was  
13 safe -- and we could debate what safe means, but let's  
14 just use the term "safe" for now. If it could be restored  
15 to a level that was safe, would that satisfy you?

16 MR. STALPES: Objection; speculation, form,  
17 foundation, and vague.

18 Go ahead.

19 THE WITNESS: If safe is where it was in the  
20 beginning, yes.

21 Q. (By Mr. Bruner) What if safe is some level  
22 higher than it was in the beginning but still a level that  
23 doesn't have an impact on human health?

24 MR. STALPES: Objection; speculation, foundation,  
25 vague, asked and answered.

1 THE WITNESS: I'm not sure

2 Q. (By Mr. Bruner) Don't know if that would be  
3 sufficient or not?

4 MR. STALPES: Same objections

5 Q. (By Mr. Bruner) Correct?

6 A. Correct.

7 Q. I used the term "safe," and I understand we could  
8 probably debate what the term "safe" means all day and  
9 maybe never even agree. What does safe mean to you?

10 MR. STALPES: Objection, foundation, speculation,  
11 vague.

12 THE WITNESS: I think safe means the same thing  
13 to me as it does to anyone. Safe is safe.

14 MR. BRUNER: Sure.

15 THE WITNESS: And free from harm.

16 Q. (By Mr. Bruner) One of the tough things about  
17 being a lawyer is, we have to try to get our hands --  
18 Everybody knows what safe is, hard to get our hands around  
19 it. Free from harm, I think that's pretty good.

20 If the property could be put in a condition where it  
21 was free from harm, would that satisfy you?

22 MR. STALPES: Objection, foundation, speculation,  
23 vague, asked and answered.

24 THE WITNESS: I would think so, Lee. I mean, I'm  
25 no scientist or anything, I don't know.

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al ) Cause No DV-08-173

Plaintiffs, )

v. )

BP AMOCO CORPORATION, et al., )  
ATLANTIC RICHFIELD COMPANY, )  
et al., )

Defendants )

DEPOSITION OF ROSEMARY CHOQUETTE

Taken at:

The Law Offices of  
Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, Montana

January 8, 2013

1:00 p.m.

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS

LINDSAY C BECK

Attorney at Law

Beck & Amsden, PLLC

1946 Stadium Drive, Suite 1

Bozeman, MT 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY

MARK THIESZEN

Attorney at Law

Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, MT 59701

MARK CHAMPOUX

EMILY DROLL

Attorneys at Law

Davis Graham & Stubbs, LLP

1550 Seventeenth Street, Suite 500

Denver, CO 80202

INDEX

Witness: Page:

ROSEMARY CHOQUETTE

Examination by Mr. Champoux 4

EXHIBITS

NO. PAGE DESCRIPTION

1	22	06/20/56 indenture
2	25	06/01/06 Quitclaim Deed
3	47	Aerial color photocopy
4	78	State Farm Homeowners Policy
5	90	02/15/12 Icopini letter to Violette, attachment
6	101	02/01/90 Public Notice of Workplans, mailing list
7	130	Color photocopies

ROSEMARY CHOQUETTE

JANUARY 8, 2013, BUTTE, MONTANA

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Rosemary Choquette was taken at the time and place and with the appearances of counsel hereinbefore noted before Jonny B. Nordhagen, Court Reporter - Notary Public for the State of Montana

It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had

ROSEMARY CHOQUETTE,  
having been called as a witness by the  
defendant, being first duly sworn, was  
examined and testified as follows

EXAMINATION

BY MR. CHAMPOUX

Q Good afternoon, Ms Choquette. Am I  
pronouncing that right?

A "Choquette," yes

1 it's just down from the smelter and -- I don't know.  
 2 Q. Closer to the smelter?  
 3 A. Yeah.  
 4 Q. And more downwind from the smelter?  
 5 A. Hm-hmm [affirmative].  
 6 Q. And those were things that you understood and  
 7 knew at the time that you went to the meeting at Fairmont?  
 8 A. I --  
 9 Q. You knew that those were attributes of that  
 10 property, that they were close to the smelter or downwind  
 11 of the smelter and had a high water table?  
 12 A. I knew there was a high water table for years.  
 13 Q. Did that lead you to be concerned about  
 14 impacts from mining or smelting waste from the smelter?  
 15 A. I didn't know. I just went there to kind of  
 16 learn.  
 17 Q. There was something about the property at 115  
 18 North Preston that made you more concerned for it than for  
 19 your property on Fairmont Road.  
 20 A. Yes.  
 21 Q. And it was the fact that it was closer to the  
 22 smelter?  
 23 A. I just said it was mostly because of the water  
 24 table, and I was always worried about the high water  
 25 table.

1 Q. The water table. You believed the high water  
 2 table made it more vulnerable to environmental hazards?  
 3 A. I don't know if it does or not. It was just  
 4 on my mind.  
 5 Q. That was your thinking at the time, though?  
 6 A. Yeah.  
 7 Q. Why did you decide to join the lawsuit after  
 8 going to the meeting?  
 9 A. Just to make sure it got cleaned up if there  
 10 was pollution.  
 11 Q. Did you understand at that time whether or not  
 12 there was pollution on the property?  
 13 A. No.  
 14 Q. You wanted to find out whether there was --  
 15 A. Yes.  
 16 Q. -- there was reason to be concerned for the  
 17 property?  
 18 A. Yes.  
 19 Q. Did you consider asking Atlantic Richfield to  
 20 come test your property?  
 21 A. No.  
 22 Q. Did you consider asking the EPA to come test  
 23 your property?  
 24 A. No.  
 25 Q. Were you aware that there was a residential

1 testing program where individual property owners could  
 2 request that their properties be sampled?  
 3 A. No.  
 4 Q. But you knew that your sister's property in  
 5 Anaconda had been sampled and had been cleaned up?  
 6 A. I knew she got new sod.  
 7 Q. And you knew that that was as a result of  
 8 environmental impacts that were detected in her soil?  
 9 A. Yes.  
 10 Q. And that those environmental impacts were  
 11 related to the smelter?  
 12 MS. BECK: Objection; lack of foundation.  
 13 THE WITNESS: I don't know where they came  
 14 from.  
 15 Q. (By Mr. Champoux) Did you think that the  
 16 environmental impacts on your sister's property were a  
 17 result of something other than the former smelting  
 18 operations in Anaconda?  
 19 MS. BECK: Same objection.  
 20 THE WITNESS: I do not know.  
 21 Q. (By Mr. Champoux) What do you hope to achieve  
 22 through this lawsuit?  
 23 A. I just hope to get the arsenic and whatever  
 24 other contaminations there are to be cleaned up.  
 25 Q. In addition --

1 A. And make it to where it was before all the  
 2 mining and all the big -- (pause.)  
 3 Q. You want your property to be made safe?  
 4 A. No, I want it to be cleaned up to where it was  
 5 before it was contaminated.  
 6 Q. Why do you want it to be cleaned up to that  
 7 particular level?  
 8 A. It's just the way it should be. If someone  
 9 makes a mess, they should clean it up.  
 10 Q. Do you believe that's the condition that the  
 11 property was in at the time you became an owner of the  
 12 property in 2006?  
 13 MS. BECK: Objection; form of the question,  
 14 vague.  
 15 THE WITNESS: Yeah, very vague.  
 16 Q. (By Mr. Champoux) The contamination that you  
 17 believe is on your property, you believe that that's a  
 18 result of the former mining and smelting operations?  
 19 MS. BECK: Objection, form of the question,  
 20 calls for expert testimony, lack of foundation.  
 21 THE WITNESS: I assume.  
 22 Q. (By Mr. Champoux) You said you wanted it to  
 23 be cleaned up to how it was before the mining and  
 24 smelting.  
 25 A. Yes.

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al, )  
 )  
Plaintiffs, )  
 )  
vs ) CAUSE NO. DV-08-173  
 )  
BP AMOCO CORPORATION, et al, )  
ATLANTIC RICHFIELD COMPANY, et al, )  
 )  
Defendants )  
 )

DEPOSITION OF GREGORY A. CHRISTIAN

Taken at:

Poore, Roth & Robinson, P.C.  
1341 Harrison Avenue  
Butte, Montana

January 28, 2013

1:00 p.m.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

BEN A. SNIPES  
Attorney at Law  
LEWIS, SLOVAK, KOVACICH & MARR, P.C.  
P. O. Box 2325  
Great Falls, Montana 59403

FOR THE DEFENDANTS:

EMILY DROLL  
Attorney at Law  
DAVIS, GRAHAM & STUBBS LLP  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202

LEE BRUNER  
Attorney at Law  
POORE, ROTH & ROBINSON, P.C.  
1341 Harrison Avenue  
Butte, Montana 59701

2

INDEX

PAGE

GREGORY A. CHRISTIAN:

Examination by Ms. Droll..... 5

INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED
1	Indenture between Robert Glover and Gregory Christian and Michelle Dudack, 7/24/1990	23
2	Warranty Deed (Joint Tenancy), Greg Christian and Michelle Dudack	24
3	Deed of Trust, Greg Christian and Michelle Dudack, 10/31/1990, w/refinance documents	25
4	Appraisal of Real Property, 616 Rickards, For Ascent Home Loans, 4/24/2008	26
5	Aerial photograph	35
6	Letter to Christians from ARCO, 7/7/2006, w/sampling results	57
7	Letter to Christians from ARCO, 2/15/2006	59
8	Letter to Christians from ARCO, 2/15/2006	64
9	Access Agreement, 2/27/2006	65

3

10	Letter to Christians from ARCO, 4/11/2007, w/Analytical Results	65
11	Schedule A, Insurance Policy, 11/5/1990	68
12	Insurance Policy, 7/15/2012 - 7/15/2013	68
13	Letter to Christians from ARCO, 2/15/2006	72
14	Letter to Christians from ARCO, 6/6/2007, w/Analytical Results	72
15	Residential Occupant Questionnaire, 6/27/2007	73
16	Letter from ARCO to Christians, 3/18/2008, w/Analytical Results	74
17	Mailing List for OCPA	76
18	Analytical Report, 7/27/2012	82
19	Newspaper article, Montana Standard, 8/30/1991	83
20	Color photographs, 000514-000528	88
21	Packet of color photographs	88

1 A. Yes.  
 2 Q. And more wildlife?  
 3 A. Wildlife, I'm so not sure about, but vegetation.  
 4 Q. Do you know who Frank Day is?  
 5 A. No.  
 6 Q. Do you know who Shannon Dunlap is?  
 7 A. No.  
 8 Q. Has anyone from Atlantic Richfield spoken with  
 9 you about the environmental conditions of your property?  
 10 A. No.  
 11 Q. Has anyone from Atlantic Richfield ever made any  
 12 misrepresentations to you?  
 13 A. No.  
 14 Q. We're pretty close to wrapping up, but I'd like  
 15 to take another break before we wrap up.  
 16 A. Okay.  
 17 (A brief discussion was held off the record.)  
 18 (A brief recess was taken.)  
 19 Q. So before we took a break, I handed you a couple  
 20 of packets of photos that we'll mark as exhibits.  
 21 (Deposition Exhibits 20 and 21 were marked for  
 22 identification.)  
 23 Q. (By Ms. Droll) And these are photos taken by  
 24 Atlantic Richfield representatives in and around your  
 25 home. Was there anything about any of these photos that  
 88

1 looked inaccurate to you or like it wasn't your home?  
 2 A. No.  
 3 Q. Could you turn back to Exhibit 5 for a moment?  
 4 Earlier, you told me about the area where the original  
 5 home on your property was constructed and where you had to  
 6 fill in topsoil. Can you just draw a square around that  
 7 area to indicate where it is?  
 8 A. (Marking exhibit ) My best recollection  
 9 Q. And just for the record, that square that you  
 10 just drew is adjacent to the eastern boundary, and it goes  
 11 around -- almost entirely around the trailer, is that  
 12 right?  
 13 A. Yes.  
 14 Q. Thank you.  
 15 Earlier, you testified that you would like your  
 16 property to be safe, is that right?  
 17 A. Uh-huh. Yes.  
 18 Q. And what does that mean to you?  
 19 A. I guess in light of this lawsuit that's taking  
 20 place, I understand that the ground is contaminated, and  
 21 if it was cleaned up and no contaminants left, I would say  
 22 that that would be safe, in my opinion.  
 23 Q. Do you believe that your property is not safe  
 24 unless every molecule of contamination is removed?  
 25 A. Yes.  
 89

1 Q. Do you believe that the opinions of the EPA or  
 2 the State Department of Health and Environment are  
 3 relevant to whether your property is safe or not?  
 4 MR. SNIPES: Objection, calls for an evidentiary  
 5 ruling of relevance and also seeks to interject EPA  
 6 standards into this common law matter. Calls for legal  
 7 opinion as well.  
 8 Q. (By Ms. Droll) I'll rephrase my question.  
 9 Do the opinions, evaluations, and standards of the EPA  
 10 and the State Department of Health mean anything to you in  
 11 your opinion of whether your property is safe?  
 12 A. No.  
 13 Q. If one of those agencies told you your property  
 14 was safe, would you be satisfied by that?  
 15 MR. SNIPES: Objection, improper hypothetical and  
 16 vague, also seeks to interject regulatory information.  
 17 THE WITNESS: No.  
 18 MS. DROLL: I have no further questions. Thank  
 19 you.  
 20 THE WITNESS: All right.  
 21 MR. SNIPES: We'll reserve our questions for the  
 22 time of time and also read and sign.  
 23 (The deposition was concluded at 3:41 p.m.)  
 24  
 25

1 DEPOSITION OF GREGORY A. CHRISTIAN  
 2 DEPOSITION DATE: January 28, 2013  
 3 IN RE: CHRISTIAN, et al. v. BP AMOCO CORPORATION, et al.  
 4 COURT REPORTER: CHERYL ROMSA  
 5 I have read my deposition and make the following  
 6 corrections or additions:  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

PAGE # LINE CORRECTION

Signed under penalty of perjury this day of  
 , 2013.

GREGORY A. CHRISTIAN  
 Deponent

Subscribed and sworn to before me this  
 day of 2013.

NOTARY PUBLIC FOR STATE OF MONTANA  
 Printed Name  
 Residing at  
 My Commission Expires  
 91

My Commission Expires

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. ) Cause No. DV-08-173

Plaintiffs, )

v )

BP AMOCO CORPORATION, et al. )  
ATLANTIC RICHFIELD COMPANY, )  
et al. )

Defendants )

DEPOSITION OF MICHELLE CHRISTIAN

Taken at:

The Law Offices of  
Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, Montana

January 28, 2013

1:00 p.m.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

ROSS JOHNSON

BEN A. SNIPES (3:45 p.m. - 4:20 p.m.)

Attorneys at Law

Lewis, Slovak, Kovacich & Marr, PC

P.O. Box 2325

Great Falls, MT 59403

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

MARK THIESZEN

Attorney at Law

Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, MT 59701

MARK CHAMPOUX

Attorney at Law

Davis Graham & Stubbs, LLP

1550 Seventeenth Street, Suite 500

Denver, CO 80202

Also present:

Greg Christian (3:45 p.m. - 4:20 p.m.)

INDEX

Witness: Page:

MICHELLE CHRISTIAN

Examination by Mr. Champoux 5

EXHIBITS

NO. PAGE DESCRIPTION

1	29	1990 Indenture
2	34	Warranty Deed
3	36	11/05/90 insurance policy
4	41	Aerial color photocopy
5	64	Color photographs
6	60	2011 Profit or Loss From Business
7	77	Deed of Trust, refinance document
8	82	The Hartford insurance document
9	86	Anderson, et al., v. ARCO, et al. Complaint
10	94	Montana Standard article
11	100	02/15/06 Ferry letter to Christians
12	101	02/15/06 Birkenbuel/Coleman letter to Christians
13	103	02/15/06 Birkenbuel letter to Christians
14	104	02/27/06 Access Agreement, attachment
15	105	04/12/06 Residential Occupant Questionnaire

EXHIBITS (continued)

NO. PAGE DESCRIPTION

16	106	07/07/06 Ferry letter to Christians, attachment
17	108	04/11/07 Kaye letter to Christians, attachment
18	111	06/06/07 Kaye letter to Christians, attachment
19	112	03/18/08 Kaye letter to Christians, attachment
20	115	OCPA Mailing List
21	117	04/24/08 Walker real property appraisal

1 you believe are related to the environmental conditions on  
2 your property?

3 MR. JOHNSON: Objection. This lawsuit's not  
4 about any personal injury here.

5 But go ahead and answer.

6 THE WITNESS: No, no.

7 Q. (By Mr. Champoux) Do you smoke?

8 A. No.

9 Q. Have you ever smoked?

10 A. Yes.

11 Q. For how long did you smoke?

12 A. I smoked for about 15 years.

13 Q. And how long has it been since you quit?

14 A. Three.

15 Q. The 15 years that you smoked were years in  
16 which you lived at the property in Opportunity?

17 A. Yes.

18 Q. When you smoked, did you smoke inside the  
19 house or did you smoke outside or both?

20 A. Probably both.

21 Q. How did you come to find out about this  
22 lawsuit?

23 A. I don't remember how I come to find out about  
24 it.

25 Q. Do you remember whether you heard about it

1 first or whether your husband told you about it?

2 A. Well, I'm sure I heard about it before he did.

3 Q. You told him about it?

4 A. Probably

5 Q. Do you remember who you might have heard about  
6 it from?

7 A. No.

8 Q. Did you attend any meetings that were held to  
9 discuss the lawsuit?

10 A. No

11 Q. How did you end up signing on as a plaintiff  
12 in the lawsuit?

13 A. I don't remember how it came about

14 Q. What do you hope to achieve through the  
15 lawsuit?

16 A. Well, I hope to achieve a safe place to be  
17 living

18 Q. Has anyone ever told you that the property  
19 that you live on today is not safe?

20 A. I don't know if it's safe or not

21 Q. My question was just a little different. Has  
22 anyone ever told you that your property is not safe?

23 A. No.

24 Q. Are you seeking to recover any money damages  
25 in this lawsuit?

1 A. No.

2 Q. Do you have any complaints about drain tiles  
3 in Opportunity?

4 A. Do I have complaints about the drain tiles? I  
5 don't have no complaints about them.

6 Q. You're not seeking through this lawsuit to  
7 have anything done with respect to the drain tiles, are  
8 you?

9 A. I don't know anything about the drain tiles.

10 Q. Are you seeking through this lawsuit to have  
11 Atlantic Richfield pay to connect your house to city  
12 water?

13 A. I don't know what's going on.

14 Q. Are you seeking through this lawsuit to have  
15 Atlantic Richfield buy you out of your property?

16 MR. JOHNSON: I think the complaint speaks for  
17 itself to a large extent.

18 But go ahead and answer.

19 THE WITNESS: No, I'm not.

20 Q. (By Mr. Champoux) If the EPA conducted  
21 additional sampling on your property and informed you that  
22 the sampling showed that your property was safe to use in  
23 every way, would that satisfy your concerns about  
24 conditions on your property?

25 MR. JOHNSON: Objection. What the EPA has to

1 say here is not relevant.

2 THE WITNESS: No.

3 Q. (By Mr. Champoux) It wouldn't satisfy you?

4 A. I would have to have more than one opinion to  
5 tell me whether it was safe or not.

6 Q. In addition to the EPA, who else could provide  
7 you an opinion that --

8 A. I guess I'd have to find out who's available  
9 out there to provide me that opinion. It's like getting a  
10 second opinion from a doctor.

11 Q. What about the Montana Department of  
12 Environmental Quality?

13 A. I'm not sure. I would have to research to see  
14 what's available.

15 Q. Do you have any reason to distrust the  
16 decisions and opinions of the EPA or the Montana  
17 Department of Environmental Quality?

18 MR. JOHNSON: Again, what the EPA or the DEQ  
19 has to say here is not relevant.

20 Go ahead and answer.

21 THE WITNESS: I don't know how to answer that.

22 MR. CHAMPOUX: And, Counsel, if you have an  
23 objection to the question, you can object to the question,  
24 but it's inappropriate to sit here and give your own  
25 opinion about my questions.

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173

Plaintiffs,  
v.  
BP AMOCO CORPORATION, et al.  
ATLANTIC RICHFIELD COMPANY, et al.,  
Defendants

DEPOSITION OF DUANE COLWELL

Taken at:

Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
January 9, 2013  
8:30 a.m.

DUANE COLWELL

CHRISTIAN, vs. BP AMOCO, et al.

January 9, 2013

Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS

JUSTIN P. STALPES  
Attorney at Law  
BECK & AMSDEN, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, Montana 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

EMILY DROLL  
Attorney at Law  
DAVIS GRAHAM & STUBBS, LLP  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202

LEE BRUNER  
Attorney at Law  
POORE, ROTH & ROBINSON, PC  
1341 Harrison Avenue  
Butte, Montana 59701

Also Present: SHIRLEY COLWELL

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

DUANE COLWELL

CHRISTIAN, vs. BP AMOCO, et al.

January 9, 2013

Page 3

INDEX

Witness:	Page:
DUANE COLWELL	
Examination by Ms. Droll	4
Examination by Mr. Stalpes	102

EXHIBITS

NO.	PAGE	DESCRIPTION
1	18	4/21/59 Indenture
2	19	"Abstract of Title"
3	26	700 W. Rickards Street property boundary
4	44	9/4/02 ADLC building permit application
5	50	1/29/90 Notice of Completion
6	57	Analytical sampling results
7	58	2/15/06 handwritten note
8	60	2/15/06 ARCO/Ferry letter to Colwell
9	61	2/20/06 Access Agreement
10	62	7/7/06 ARCO/Ferry letter to Colwell letter
11	70	Homeowners insurance policy
12	73	7/27/12 Fremont Analytical Report
13	79	OCA Mailing List
14	83	Yard sampling packet, color photocopies
15	90	Handwritten personal notes
16	91	8/21/11 Property Record Card
17	101	10/15/01 WET well sampling work plan

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

DUANE COLWELL

CHRISTIAN, vs. BP AMOCO, et al.

January 9, 2013

Page 4

DUANE COLWELL

WEDNESDAY, JANUARY 9, 2013, BUTTE, MONTANA

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Duane Colwell, was taken at the time and place and with the appearances of counsel hereinbefore noted before Candice Nordhagen, Registered Professional Reporter and Notary Public for the State of Montana. It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had:

DUANE COLWELL,

having been called as a witness by the defendants, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. DROLL

Q Good morning. I'll introduce myself again for the record. My name is Emily Droll, and I'm an attorney for Atlantic Richfield.

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00030

1 clean your property?  
 2 A. No.  
 3 MR. STALPES: Objection. Other than this  
 4 lawsuit, I assume.  
 5 Q. (By Ms. Droll) I guess what I'm asking is:  
 6 Aside from testing, have you done anything to actually  
 7 clean or remediate your soil or water?  
 8 MR. STALPES: Objection; vague.  
 9 THE WITNESS: No.  
 10 Q. (By Ms. Droll) Does anyone living at your home  
 11 have any illness or health problems?  
 12 A. No, just old age.  
 13 Q. Do you smoke?  
 14 A. No.  
 15 Q. Have you ever smoked in the past?  
 16 A. Never have.  
 17 Q. Have you ever used other tobacco products?  
 18 A. I chewed tobacco maybe a year.  
 19 Q. One year total?  
 20 A. Yeah.  
 21 Q. When was that?  
 22 A. Oh boy, that was in the early '60s.  
 23 Q. Okay. Do you believe your health is being  
 24 threatened by the presence of environmental contamination  
 25 on your property?

1 MR. STALPES: Objection; foundation.  
 2 THE WITNESS: I do.  
 3 Q. (By Ms. Droll) Have you or anyone else in your  
 4 family ever had a health condition that you believe was a  
 5 result of environmental contamination on your property?  
 6 A. My son had asthma pretty bad. I don't know  
 7 whether that caused some of it or not. It could have.  
 8 Q. Any other health conditions that you  
 9 believe --  
 10 A. No.  
 11 Q. -- might have been caused by environmental  
 12 contamination?  
 13 A. As soon as he went to Las Vegas, his asthma  
 14 kind of disappeared.  
 15 Q. Do you know why that is?  
 16 A. Pardon?  
 17 Q. Do you have any ideas about why that might be?  
 18 A. No, I don't.  
 19 Q. How did you come to find out about this  
 20 lawsuit and join as a plaintiff?  
 21 A. From my neighbor.  
 22 Q. Why did you decide to join?  
 23 A. Well, I want a fair value price for my  
 24 property and my yard cleaned up.  
 25 Q. What do you hope to achieve as a remedy in

1 this lawsuit?  
 2 A. Well, I'd like to have the soil back to where  
 3 it was before the smelter came in  
 4 Q. Why is that?  
 5 A. For health reasons.  
 6 Q. Are you seeking to recover money damages?  
 7 A. No.  
 8 Q. Sorry, go ahead.  
 9 A. I just want a fair price for my property and  
 10 cleaned up.  
 11 Q. What are the clean-up steps that you think  
 12 should be taken on your property?  
 13 MR. STALPES: Objection; speculation,  
 14 foundation.  
 15 THE WITNESS: I'd like to have all the arsenic  
 16 and minerals removed from my property.  
 17 Q. (By Ms. Droll) Are you seeking through this  
 18 lawsuit to have Atlantic Richfield purchase your property?  
 19 A. No.  
 20 Q. Are you seeking through this lawsuit to have  
 21 Atlantic Richfield do work on the Opportunity Ponds to  
 22 remove waste or clean up that area?  
 23 MR. STALPES: Object; the Complaint speaks for  
 24 itself.  
 25 Go ahead.

1 THE WITNESS: No, I'm not.  
 2 Q. (By Ms. Droll) Have you incurred any personal  
 3 expenses for testing or remediation that you're seeking to  
 4 recover in this lawsuit?  
 5 A. No.  
 6 Q. Do you have friends or neighbors or relatives  
 7 in the area that chose not to participate in the lawsuit?  
 8 A. I do.  
 9 Q. Do you know -- I'm sorry, go ahead.  
 10 A. I have a brother and sister that live there in  
 11 Opportunity that's not in it.  
 12 Q. Do you know why they chose not to be?  
 13 A. No, I don't.  
 14 Q. Have you ever spoken to them about the  
 15 lawsuit?  
 16 A. No, I haven't.  
 17 Q. Do you agree that Anaconda and Atlantic  
 18 Richfield's mining and smelting operations have been shut  
 19 down for some time now?  
 20 A. Yes.  
 21 Q. Since the early 1980s?  
 22 A. Yeah, 1980.  
 23 Q. Do you agree that any mining and smelting  
 24 waste that you allege to be on your property came there  
 25 awhile ago, by the 1980s?

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al ) Cause No. DV-08-173  
Plaintiffs, )  
v )  
BP AMOCO CORPORATION, et al, )  
ATLANTIC RICHFIELD COMPANY, )  
et al, )  
Defendants )

DEPOSITION OF SHIRLEY COLWELL

Taken at:

Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
January 9, 2013  
12:35 p.m.

SHIRLEY COLWELL

CHRISTIAN, vs. BP AMOCO, et al

January 9, 2013

Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

JUSTIN P. STALPES  
Attorney at Law  
BECK & AMSDEN, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, Montana 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

EMILY DROLL  
Attorney at Law  
DAVIS GRAHAM & STUBBS, LLP  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202

LEE BRUNER  
Attorney at Law  
POORE, ROTH & ROBINSON, PC  
1341 Harrison Avenue  
Butte, Montana 59701

Also Present: DUANE COLWELL

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

SHIRLEY COLWELL

CHRISTIAN, vs. BP AMOCO, et al.

January 9, 2013

Page 3

INDEX

Witness:	Page:
SHIRLEY COLWELL	
Examination by Ms. Droll	4
Examination by Mr. Stalpes	75

EXHIBITS

NO.	DESCRIPTION
1	4/21/59 Indenture
2	"Abstract of Title"
3	700 W. Rickards Street property boundary
4	9/4/02 ADLC bulding permit application
5	1/29/90 Notice of Completion
6	Analytical sampling results
7	2/15/06 handwritten note
8	2/15/06 ARCO/Ferry letter to Colwell
9	2/20/06 Access Agreement
10	7/7/06 ARCO/Ferry letter to Colwell letter
11	Homeowners insurance policy
12	7/27/12 Fremont Analytical Report
13	OCPA Mailing List
14	Yard sampling packet, color photocopies
15	Handwritten personal notes
16	8/21/11 Property Record Card
17	10/15/01 WET well sampling work plan

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

SHIRLEY COLWELL

CHRISTIAN, vs. BP AMOCO, et al

January 9, 2013

Page 4

SHIRLEY COLWELL

WEDNESDAY, JANUARY 9, 2013, BUTTE, MONTANA

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Shirley Colwell, was taken at the time and place and with the appearances of counsel hereinbefore noted before Candice Nordhagen, Registered Professional Reporter and Notary Public for the State of Montana. It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had:

SHIRLEY COLWELL,

having been called as a witness by the defendants, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. DROLL:

Q Good afternoon, Mrs. Colwell  
A Good afternoon  
Q Let me reintroduce myself for the record. I'm

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00032

1 or health problem that you believe is a result of  
2 environmental contamination on your property?

3 A. No.

4 Q. Your children, while they lived on the  
5 property, did any of them have an illness or health  
6 problem that you believe was related to environmental  
7 contamination on the property?

8 A. Well, we talked about my son having asthma,  
9 but we don't know that that is related, but we have often  
10 wondered.

11 Q. Can we take another break?

12 A. Sure.

13 (A brief recess was taken.)

14 BY MS. DROLL:

15 Q. Ms. Colwell, did you get a chance to look at  
16 the photo packet marked as Exhibit 14?

17 A. Yes.

18 Q. Did you see anything in those photos that  
19 looks inaccurate to you?

20 A. No.

21 Q. Do all of those photos accurately represent  
22 your property?

23 A. Yes.

24 Q. One thing I wanted to follow up on, your  
25 husband mentioned that before you purchased the property,

1 it was used as pastureland. Do you know whether it was  
2 irrigated when it was used as pastureland?

3 MR. STALPES: Object.

4 THE WITNESS: No.

5 MR. STALPES: I can't remember his testimony,  
6 but I don't remember if it was that or not.

7 But go ahead.

8 THE WITNESS: No, I don't know.

9 Q. (By Ms. Droll) Do you remember what the  
10 property was used for?

11 A. We did have cows. No, I don't.

12 Q. But you don't know how it was irrigated or if  
13 it was irrigated?

14 A. No, no.

15 Q. How did you come to find out about this  
16 lawsuit and join as a plaintiff?

17 A. I was talking to our neighbors.

18 Q. What did you talk to your neighbors about that  
19 lead you to decide to join the lawsuit?

20 A. They just said they were going to try to find  
21 out, get some experts to find out if there was  
22 contamination in the soil and just thought we would join  
23 to make sure.

24 Q. What remedy do you hope to achieve through  
25 this lawsuit?

1 A. I just want our soil to go back to where it  
2 was before it was contaminated. I want to stay in the  
3 house. I just want it to be cleaned up, especially under  
4 the house.

5 Q. When you say you want the property to be  
6 cleaned up, if you could have any type of clean-up that  
7 you wanted, what clean-up would you choose to make to make  
8 your property satisfactory to you?

9 MR. STALPES: Objection, speculation,  
10 foundation, vague.

11 THE WITNESS: I don't really know.

12 Q. (By Ms. Droll) Do you have any clean-up steps  
13 that you think should be taken on the property?

14 MR. STALPES: Objection, foundation, calls for  
15 expert testimony.

16 THE WITNESS: I don't know.

17 Q. (By Ms. Droll) When you say you want the  
18 property to be cleaned up, what do you mean by that?

19 A. I mean to just make sure there is no arsenic  
20 in our ground, and that everything is safe, and our  
21 property values is where it should be.

22 Q. If the EPA were to tell you that your property  
23 is already safe, would that satisfy you?

24 A. No.

25 MR. STALPES: Objection, assumes facts not in

1 evidence, speculation, and foundation.

2 THE WITNESS: No.

3 Q. (By Ms. Droll) Why not?

4 MR. STALPES: Same objections.

5 THE WITNESS: I want to go by the expert's  
6 testimony.

7 Q. (By Ms. Droll) What do you mean by you want to  
8 go by the expert?

9 A. I'm just going to go by what our lawyers had  
10 come to. That level, that's what I'm going to go by.

11 Q. So you if you were able to hire Kane or  
12 another independent expert that told you that your  
13 property was safe as it is, would that satisfy you?

14 MR. STALPES: Objection; speculation, assumes  
15 facts not in evidence, foundation.

16 THE WITNESS: I don't know. I don't know.

17 Q. (By Ms. Droll) Do you want your property to be  
18 safe?

19 MR. STALPES: Objection; that misstates the  
20 testimony.

21 Q. (By Ms. Droll) You can go ahead and answer.

22 A. Yes.

23 Q. What does that mean to you?

24 A. That the property is cleaned up and it is  
25 safe, the environment is safe, I mean free of contaminants.

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173  
Plaintiffs,  
v.  
BP AMOCO CORPORATION, et al.,  
ATLANTIC RICHFIELD COMPANY, et al.,  
Defendants

DEPOSITION OF FRANKLIN COONEY

Taken at

Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
November 29, 2012  
9:00 a.m.

FRANKLIN COONEY

CHRISTENSEN vs. BARRETT

November 29, 2012

Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

MARK M. KOVACICH  
ROSS T. JOHNSON  
Attorneys at Law  
LEWIS, SLOVAK, KOVACICH & MARR, P.C.  
725 Third Avenue North  
Bozeman, Montana 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

LEE BRUNER  
Attorney at Law  
POORE, ROTH & ROBINSON, PC  
1341 Harrison Avenue  
Butte, Montana 59701  
MARK CHAMPOUX  
Attorney at Law  
DAVIS GRAHAM & STUBBS, LLP  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202

Also Present: Victoria Cooney

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

FRANKLIN COONEY

CHRISTENSEN vs. BARRETT

November 29, 2012

Page 3

INDEX

Witness: Page:  
FRANKLIN COONEY  
Examination by Mr. Champoux 5

EXHIBITS

NO.	PAGE	DESCRIPTION
1	44	6/18/93 Cline-Cooney Indenture
2	56	2/24/12 Homeowners insurance
3	63	500 S. Hauser property boundary map
4	89	Cooney Responses to 2nd discovery requests
5	108	6/30/93 Note
6	116	10/27/99 Listing contract
7	120	7/15/11 Loan Modification
8	126	5/24/05 Ferry/ARCO letter to Cooney
9	128	6/8/05 ARCO-Cooney Access Agreement
10	131	11/7/05 Ferry/ARCO letter to Cooney
11	142	3/20/11 Appraisal packet
12	149	color photocopies 500 S. Hauser
13	149	color photocopy packet 500 S. Hauser
14	149	color photocopies 500 S. Hauser

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

FRANKLIN COONEY

CHRISTENSEN vs. BARRETT

November 29, 2012

Page 4

FRANKLIN COONEY

THURSDAY, NOVEMBER 29, 2012, BUTTE, MONTANA

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Franklin Cooney was taken at the time and place and with the appearances of counsel hereinbefore noted before Candice Nordhagen, Registered Professional Reporter and Notary Public for the State of Montana. It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had:

FRANKLIN COONEY,

having been called as a witness by the defendants, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CHAMPOUX:

Q. Good morning, Mr. Cooney.  
A. Good morning.  
Q. How are you doing?

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00034

1 doctor in the last couple weeks, have you had any other  
2 discussions with any health professionals or doctors about  
3 concerns about environmental conditions on your property?

4 A. No.

5 Q. Other than your prostate cancer, how's your  
6 personal health?

7 A. Pretty good. I have a real bad back, but I've  
8 had that a long time.

9 Q. Do you have any other health conditions that  
10 you believe may be related to environmental conditions on  
11 your property?

12 A. No.

13 Q. Do you smoke?

14 A. No.

15 Q. Have you ever smoked?

16 A. About 30 years ago.

17 Q. About how long did you smoke?

18 A. Just a short time, about from 20 to about 25,  
19 and then I quit that. And then I chewed, and I quit that.  
20 And I haven't drank alcohol in almost 30 years.

21 Q. So you smoked for about five years when you  
22 were young?

23 A. Um-hmm [affirmative].

24 Q. And you chewed tobacco as well for some period  
25 of time?

1 A. Yeah. Well, I chewed probably a good 15 years  
2 - 20 years, quit, and got back on it, and quit again.

3 It's a hard habit to quit. I haven't chewed now for about  
4 two months, but it is a tough habit to quit.

5 Q. So you've quit a couple times but you've also  
6 began chewing again?

7 A. Yeah.

8 Q. And you were chewing tobacco up until a couple  
9 months ago?

10 A. Yeah.

11 Q. I think we talked about this. How did you  
12 come to find out about this lawsuit?

13 MR. SLOVAK: That was asked and answered.

14 You can answer again.

15 THE WITNESS: Oh, great. I don't know. I was  
16 contacted and then I went to a meeting. That was about  
17 it.

18 Q. (By Mr. Champoux) Do you remember who  
19 contacted you?

20 A. I can't recall. It was quite awhile ago.

21 Q. What do you hope to achieve through this  
22 lawsuit?

23 A. Get my property cleaned up.

24 Q. In what way do you want your property cleaned  
25 up?

1 MR. SLOVAK: Let me object. It calls for  
2 expert testimony which will be the subject of the expert  
3 disclosures as to the specific procedures and plans that  
4 will be implemented to clean up the property.

5 Subject to that objection, you can respond,  
6 Mr. Cooney.

7 THE WITNESS: What was your question?

8 Q. (By Mr. Champoux) How would you like your  
9 property and cleaned up?

10 A. I'd like it removed. I have grandkids that  
11 are coming over there all the time. I've got nine little  
12 ones, you know, and they play out there all the time. So,  
13 you know, I want it taken care of.

14 Q. When you say you want it removed, you want the  
15 soil removed and replaced?

16 A. Yeah. I want it where there's no  
17 contamination for my kids and grandkids, especially, my  
18 little ones.

19 Q. Has anyone told you that there is  
20 contamination in your soil that your grandkids are being  
21 exposed to?

22 MR. SLOVAK: Let me renew the continuing  
23 objection we've had from time to time.

24 You can respond to that question, Frank, just  
25 as long as you can do so without relying upon any

1 information that your attorneys gave to you about that.  
2 So if you have other sources of information other than  
3 what we've told you, then you can answer. But if the  
4 source of your knowledge is from us, you should say that  
5 you can't answer.

6 THE WITNESS: Can't answer.

7 Q. (By Mr. Champoux) Aside from your attorneys,  
8 no one has ever told you that there are contaminants in  
9 your property that your grandchildren playing in the yard  
10 may be exposed to?

11 A. No, I never talked to anyone about it.

12 Q. Aside from your attorneys, has anyone ever  
13 told you that your water isn't safe to drink and use?

14 A. No, just that test I got back, that was it.

15 Q. Are you seeking to recover any money damages  
16 in this lawsuit?

17 A. That's up to my attorney.

18 Q. Do you hope to recover any money in this  
19 lawsuit?

20 A. I say that's up to my attorney to deal with  
21 anything like those issues.

22 Q. It doesn't matter to you whether or not you  
23 recover money in this lawsuit?

24 A. The main option I'm after is everything  
25 cleaned up, my drinking water, my ground. You know, my

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173  
Plaintiffs,  
v.  
BP AMOCO CORPORATION, et al.,  
ATLANTIC RICHFIELD COMPANY, et al.,  
Defendants

DEPOSITION OF VICTORIA COONEY

Taken at

Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
November 29, 2012  
2:10 pm

VICTORIA COONEY

CHRISTENSEN vs. BARRETT

November 29, 2012

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

MARK KOVACICH

ROSS T. JOHNSON

Attorneys at Law

LEWIS, SLOVAK, KOVACICH & MARR, P.C.

725 Third Avenue North

Bozeman, Montana 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

LEE BRUNER

Attorney at Law

POORE, ROTH & ROBINSON, PC

1341 Harrison Avenue

Butte, Montana 59701

MARK CHAMPOUX

Attorney at Law

DAVIS GRAHAM & STUBBS, LLP

1550 Seventeenth Street, Suite 500

Denver, Colorado 80202

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

VICTORIA COONEY

CHRISTENSEN vs. BARRETT

November 29, 2012

Page 3

INDEX

Witness: Page:

VICTORIA COONEY

Examination by Mr. Champoux 4

EXHIBITS

NO. PAGE DESCRIPTION

1	44	6/18/93 Cline-Cooney Indenture
2	56	2/24/12 Homeowners insurance
3	63	500 S Hauser property boundary map
4	89	Cooney Responses to 2nd discovery requests
5	108	6/30/93 Note
6	116	10/27/99 Listing contract
7	120	7/15/11 Loan Modification
8	126	5/24/05 Ferry/ARCO letter to Cooney
9	128	6/8/05 ARCO-Cooney Access Agreement
10	131	11/7/05 Ferry/ARCO letter to Cooney
11	142	3/20/11 Appraisal packet
12	149	color photocopies 500 S. Hauser
13	149	color photocopy packet 500 S. Hauser
14	149	color photocopies 500 S. Hauser

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

VICTORIA COONEY

CHRISTENSEN vs. BARRETT

November 29, 2012

Page 4

VICTORIA COONEY

THURSDAY, NOVEMBER 29, 2012, BUTTE, MONTANA

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Victoria Cooney was taken at the time and place and with the appearances of counsel hereinbefore noted before Candice Nordhagen, Registered Professional Reporter and Notary Public for the State of Montana. It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had

VICTORIA COONEY,

having been called as a witness by the defendants, being first duly sworn, was examined and testified as follows.

EXAMINATION

BY MR. CHAMPOUX

Q. Good afternoon, Mrs. Cooney. My name is Mark Champoux. I'm an attorney for Atlantic Richfield. Thank you for coming today. Mrs. Cooney, have you

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00036

1 those results, then I really -- (pause)

2 Q. The mild concern that you had when the lawsuit  
3 began, when did you begin to have that mild concern?

4 A. Just thinking about what the possibilities  
5 could be.

6 Q. What gave rise to that concern?

7 A. Just human nature; inquisitive, I guess.

8 Q. Did anyone tell you that your property was  
9 likely impacted by environmental contamination?

10 A. No.

11 Q. What led you to believe that there was a  
12 possibility that it was impacted by the environmental  
13 contamination?

14 A. It was after it started that I was led to  
15 believe there was a possibility of contamination. To what  
16 degree, we didn't know.

17 Q. When you joined the lawsuit, you were  
18 interested in finding out whether or not you had reason to  
19 be concerned?

20 A. Yes.

21 Q. And that was a reason for joining the lawsuit?

22 A. Yes.

23 Q. Did you ever reach out to anyone at all about  
24 getting any testing done on your property?

25 A. No.

1 Q. What do you hope to achieve through this  
2 lawsuit?

3 A. To get my property cleaned up to the way it  
4 was supposed to be.

5 Q. When you say cleaned up to the way it was --

6 A. I don't know what point you can go to, but my  
7 property just needs to be uncontaminated.

8 Q. When you say you'd like your property to be  
9 uncontaminated, is there a certain level of --

10 A. No.

11 Q. -- metals or substances in the property that  
12 does or does not meet your threshold of uncontaminated?

13 A. I don't know the particulars of numbers, but I  
14 believe it should be cleaned up, so to the best that it  
15 can be cleaned up.

16 Q. You're aware that the EPA has been directing  
17 clean-up activities in the Anaconda area, including in  
18 Opportunity?

19 A. Some knowledge.

20 Q. Are you interested in knowing what the EPA  
21 standard is for a clean-up action level on residential  
22 properties in Opportunity?

23 MR. KOVACICH: Objection; that level has no  
24 application in this case. Whether she's interested in  
25 knowing it or not is not calculated to lead to anything

1 admissible in evidence.

2 A. No.

3 Q. Is there any reason why you would distrust  
4 what the EPA has to say about clean-up action levels?

5 A. I have no reason to distrust, but I believe  
6 the person that put it there should be the person that  
7 takes it off.

8 Q. Who is the person that you believe can tell  
9 you whether the property needs to be cleaned up and to  
10 what extent it needs to be cleaned up?

11 MR. KOVACICH: Objection; vague, compound.

12 THE WITNESS: If the testing proves out, I  
13 would say.

14 Q. (By Mr. Champoux) But not if it's EPA testing?

15 MR. KOVACICH: Objection; now you're just  
16 arguing with her, and that's not what she said at all.

17 Q. (By Mr. Champoux) If EPA testing showed that  
18 any substances found on your property do not exceed  
19 clean-up action levels, would that satisfy you?

20 A. No.

21 MR. KOVACICH: Objection; those levels don't  
22 apply in this case. It's not even clear what levels  
23 you're talking about. You're referring to EPA testing and  
24 levels. The question is confusing.

25 Q. (By Mr. Champoux) Are you seeking to recover

1 any money in this lawsuit?

2 A. No.

3 Q. Have you spent any money out of pocket for  
4 testing or clean-up of environmental conditions on your  
5 property?

6 A. No.

7 Q. Do you know who Frank Day is?

8 A. What's the name?

9 Q. Frank Day?

10 A. No.

11 Q. Do you know who Shannon Dunlap is?

12 A. No.

13 Q. You've never spoken to either of them, to your  
14 knowledge?

15 A. Not to my knowledge.

16 Q. I think I asked this question, and I don't  
17 mean to ask it again and be repetitive, I just can't  
18 remember if I asked it. Have you ever spoken with anyone  
19 at Atlantic Richfield about environmental conditions on  
20 your property?

21 A. No.

22 MR. CHAMPOUX: Give me a couple minutes. We  
23 may be done.

24 (A brief recess was taken.)

25 BY MR. CHAMPOUX

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173

Plaintiffs,

BP AMOCO CORPORATION, et al.,  
ATLANTIC RICHFIELD COMPANY,  
et al.,

Defendants

DEPOSITION OF GEORGE COWARD

Taken at:

The Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana

November 28, 2012

9:00 a.m.

GEORGE COWARD

CHRISTIAN, vs. BP AMOCO, et al.

November 28, 2012

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

MARK M. KOVACICH

BEN SNIPES

Attorneys at Law

LEWIS, SLOVAK, KOVACICH & MARR, P.C.

725 Third Avenue North

Bozeman, Montana 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

LEE BRUNER

Attorney at Law

POORE, ROTH & ROBINSON, PC

1341 Harrison Avenue

Butte, Montana 59701

JONATHAN W. RAUCHWAY

Attorney at Law

DAVIS GRAHAM & STUBBS, LLP

1550 Seventeenth Street, Suite 500

Denver, Colorado 80202

Also Present: Shirley Coward

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

GEORGE COWARD

CHRISTIAN, vs. BP AMOCO, et al.

November 28, 2012

Page 3

INDEX

Witness: Page:

GEORGE COWARD

Examination by Mr. Rauchway 5

GEORGE COWARD

CHRISTIAN, vs. BP AMOCO, et al.

November 28, 2012

Page 4

EXHIBITS

NO. PAGE DESCRIPTION

1 29 11/8/12 107 North Leslie Street map

2 32 Plaintiffs' responses to discovery requests

3 57 Response to Request for Production No. 1

4 67 5/10/05 Final Report to Concerned Citizens

5 76 Response to Request for Production No. 10

6 118 Second Amended Complaint

(Marked in Shirley Coward's deposition)

7 39 8/16/12 Opportunity yard sampling photos

8 50 Responses to Requests for Production

Nos. 10, 11, 12

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00038

1 MR. KOVACICH: Objection; that's already been  
2 answered, too.

3 THE WITNESS: Well, I'm not going to answer  
4 that one. You're going to get me now. I just can't  
5 answer it. That's it.

6 Q. (By Mr. Rauchway) What I'm getting at is:  
7 What are you hoping to achieve by having agreed to join in  
8 this lawsuit?

9 A. I could say a million things, but I just want  
10 to be treated fair and square.

11 Q. Okay. Can you explain to me why you feel you  
12 haven't been treated fair and square?

13 A. What?

14 Q. Can you explain to me how you feel that you  
15 haven't been treated fair and square?

16 A. I don't know I have.

17 Q. Okay. Can you tell me why?

18 A. Nothing's been done until now. When did they  
19 start cleaning up around there because a person could  
20 notice it?

21 Q. So you mean because other areas have been  
22 cleaned up, you feel that your area should be cleaned up,  
23 also?

24 A. Yeah. It's getting, getting done very, very  
25 slow. Everything will come out in the wash and be all

1 right. I think everything will be okay regardless which  
2 way it goes.

3 Q. So you're hoping that you get your property  
4 cleaned up through this lawsuit?

5 A. Yeah, the property, the water, and that  
6 Money, no, because I don't think there would be very much  
7 there.

8 Q. So you want the Court to order Atlantic  
9 Richfield to clean up your property?

10 MR. KOVACICH: Objection. Now you're asking  
11 him about legal technicalities relating to the nature of  
12 his remedy.

13 THE WITNESS: I have to go along with him.

14 MR. KOVACICH: He's not qualified to testify  
15 to the distinction you're trying to make with that  
16 question.

17 Q. (By Mr. Rauchway) Well, Mr. Coward, I'm  
18 entitled to ask you why you brought the lawsuit and what  
19 you're hoping to achieve. And your attorney is entitled  
20 to put his objections on the record, but you still have to  
21 answer the question?

22 MR. KOVACICH: And I'll add another objection  
23 that he's already testified at some length as to why he  
24 brought the lawsuit and what he wants to achieve. You're  
25 now just asking him a question that goes to a legal

1 technicality that, frankly, you're just trying to trick  
2 him into giving you testimony that you think you can use.

3 THE WITNESS: Well, you wouldn't do that,  
4 would you?

5 MR. RAUCHWAY: I wouldn't.

6 In fact, you're now making improper speaking  
7 objections. As I'm sure you know, Mark, they have to be  
8 short and concise. I have not engaged you in arguing  
9 about your objections, and I don't intend to. You got it,  
10 you got it on the record.

11 Q. (By Mr. Rauchway) My question was: Are you  
12 seeking to have the Court order Atlantic Richfield to  
13 clean up your property? Is that what you want or are  
14 hoping in this lawsuit? Is that what you're asking?

15 MR. KOVACICH: Now that he's asked the  
16 question again, I'm going to object that you're asking  
17 about a legal distinction between a damage award and some  
18 sort of injunctive relief that Mr. Coward has no  
19 foundation to even understand, and he's already testified  
20 to why he brought the lawsuit.

21 You can answer again, George, if you  
22 understand the question, why you brought the lawsuit and  
23 tell him again what you hope to achieve by that.

24 Q. (By Mr. Rauchway) My question, Mr. Coward, if  
25 you've forgotten was whether you were hoping that the

1 Court order -- you're asking the Court to order Atlantic  
2 Richfield to clean up your property?

3 A. Yes, I think that would be fair to clean  
4 everything up, clean it up. What if I wanted to sell it?  
5 Who would get the kink in the neck then?

6 Q. Well, do you think that it would be hard to  
7 sell your property?

8 A. You're goddamn right.

9 Q. What makes you think that?

10 A. People are scared. People are scared of this  
11 pollution and that. But, I mean, some people, they don't  
12 -- I know, I just know from my life that people get scared  
13 and they freeze up.

14 Q. You haven't tried to sell your property, have  
15 you?

16 MR. KOVACICH: Objection, asked and answered.

17 Q. (By Mr. Rauchway) You haven't tried to sell  
18 your property have you?

19 A. No.

20 Q. Do you have neighbors in Opportunity you know  
21 who have had trouble selling their property?

22 A. I don't know. That's a tough question. I  
23 mean that's something that no one knows if it would be  
24 tough or easy. It could be tough and it could be easy,  
25 but which way the pendulum would swing, I don't know. I

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. ) Cause No. DV-08-173  
Plaintiffs, )  
v )  
BP AMOCO CORPORATION, et al. )  
ATLANTIC RICHFIELD COMPANY, )  
et al. )  
Defendants )

DEPOSITION OF VIOLA DUFFY

Taken at

Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
January 22, 2013  
1:00 p.m.

VIOLA DUFFY

CHRISTIAN, vs. BP AMOCO, et al.

January 22, 2013

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS

J. DAVID SLOVAK

ROSS T. JOHNSON

Attorneys at Law

LEWIS, SLOVAK, KOVACICH & MARR, P.C.

725 Third Avenue North

Bozeman, Montana 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY

JONATHAN W. RAUCHWAY

Attorney at Law

DAVIS GRAHAM & STUBBS L.L.O.

1550 Seventeenth Street, Suite 500

Denver, Colorado 80202

PATRICK M. SULLIVAN

Attorney at Law

POORE, ROTH & ROBINSON, PC

1341 Harrison Avenue

Butte, Montana 59701

Also Present: George Niland

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

VIOLA DUFFY

CHRISTIAN, vs. BP AMOCO, et al.

January 22, 2013

Page 3

INDEX

Witness: Page:

VIOLA DUFFY

Examination by Mr. Rauchway 4

EXHIBITS

NO. PAGE DESCRIPTION

1	25	1311 Smith property map
2	27	colored photocopies
3	33	1311 Smith Property Record Card
4	41	Plaintiff's responses to discovery
5	47	10/10/05 ARCO letter to Duffy
6	48	10/13/05 Access Agreement
7	56	1/15/10 Homeowners insurance
8	58	7/31/06 ARCO soil sampling results
9	60	2/25/08 County letter for WET sampling
10	62	3/18/08 County letter for WET sampling
11	63	5/2/08 County letter for WET sampling
12	63	5/30/08 County letter for WET sampling
13	66	7/2/08 County letter for WET sampling
14	68	5/11/11 Bureau water sampling results
15	76	color photocopies
16	90	Third Amended Complaint/Jury Demand
17	109	5/10/05 Saha Final Report

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

VIOLA DUFFY

CHRISTIAN, vs. BP AMOCO, et al.

January 22, 2013

Page 4

VIOLA DUFFY

TUESDAY, JANUARY 22, 2013, BUTTE, MONTANA

---

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Viola Duffy, was taken at the time and place and with the appearances of counsel hereinbefore noted before Candice Nordhagen, Registered Professional Reporter and Notary Public for the State of Montana

It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had:

VIOLA DUFFY,

having been called as a witness by the defendants, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BRUNER

Q Good afternoon, Mrs. Duffy

A Hi.

Q My name is John Rauchway. I represent

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00040

1 Q. On the last page there, page 16, there's a  
2 paragraph that says, that starts with "We believe."  
3 Do you see that one?  
4 A. Yes  
5 Q. And it says: "We believe that to correct this  
6 environmental injustice, British Petroleum," and others,  
7 should address the losses already incurred and the serious  
8 ongoing threats to property and health."  
9 Did you agree with that back in 2005?  
10 A. Yes.  
11 Q. And the last paragraph there that's in  
12 italics, there's a list of student researchers starting  
13 with "Sarah Cobler" and ending with, I think I'm  
14 pronouncing this correctly a "Pilar Venezian."  
15 Do you remember any of those folks?  
16 A. I sure don't.  
17 Q. When did you decide to join this lawsuit and  
18 sue Atlantic Richfield?  
19 A. Well, I was one of the -- when they first  
20 started.  
21 Q. Why did you make that decision? What made you  
22 decide to sue Atlantic Richfield?  
23 A. Because I felt something should have been  
24 done. The talk was going around about how contaminated it  
25 was and the dust and all that, so -- (pause)

1 Q. You say "the dust." The dust from the ponds?  
2 A. (Nodding head affirmatively) -- and we're  
3 going to have more of it.  
4 Q. Can you explain to me what you're hoping to  
5 achieve through this lawsuit?  
6 A. Cleaning it up.  
7 Q. When you say "cleaning it up," you mean your  
8 property in Opportunity?  
9 A. Um-hmm [affirmative] -- I've lost a lot of  
10 customers down there.  
11 Q. What do you mean by that, you've "lost a lot  
12 of customers"?  
13 A. They have died.  
14 Q. Do you blame Atlantic Richfield for that?  
15 A. I don't know who to blame it on.  
16 Q. When you say "they died," they died of old age  
17 or they died of --  
18 A. Mostly of cancer.  
19 Q. Both.  
20 A. (Nodding head affirmatively) -- there's some  
21 down there that's got MS; some have got diseases you can't  
22 even believe, I don't know what they call them any more;  
23 and cancer.  
24 Q. Are you worried that these diseases - cancer,  
25 MS, and other things - are caused by environmental

1 contamination?  
2 A. Who knows? Could be, could not be  
3 MR. RAUCHWAY: Why don't we take a few  
4 minutes. I think if I'm not finished, I'm awfully close  
5 (A brief recess was taken.)  
6 MR. RAUCHWAY: No more questions. Thank you  
7 very much for your patience, Ms. Duffy. I appreciate it.  
8 THE WITNESS: Thank you.  
9 MR. SLOVAK: We will reserve our questions  
10 until time of trial, and we will reserve reading and  
11 signing.  
12 (The deposition concluded at  
13 approximately 4:20 p.m.)  
14  
15 \* \* \* \* \*  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF MONTANA )  
2 ss  
3 County of Silver Bow )  
4  
5 I, Candice L. Nordhagen, Registered Professional  
6 Reporter, Notary Public in and for the County of Silver  
7 Bow, State of Montana, do hereby certify  
8  
9 That the witness in the foregoing deposition, Viola  
10 Duffy by me first duly sworn according to law in the  
11 foregoing cause, that the deposition was then taken before  
12 me at the time and place herein named, that the deposition  
13 was reported by me in machine shorthand and later  
14 transcribed by computer, and that the foregoing one  
15 hundred seventeen (117) pages contain a true record of the  
16 witness, all done to the best of my skill and ability  
17  
18 IN WITNESS WHEREOF, I have hereunto set my hand and  
19 affixed my notarial seal this \_\_\_\_ day of \_\_\_\_\_,  
20 2013  
21  
22 Candice L. Nordhagen  
23 Notary Public for the State of  
24 Montana residing at Butte,  
25 Montana. My commission  
(NOTARIAL SEAL) expires October 26, 2016

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. ) Cause No. DV-08-173  
Plaintiffs, )  
v. )  
BP AMOCO CORPORATION, et al. )  
ATLANTIC RICHFIELD COMPANY, )  
et al., )  
Defendants. )

DEPOSITION OF BRUCE DUXBURY

Taken at:

The Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
January 24, 2013  
9:05 a.m.

BRUCE DUXBURY

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 24, 2013

Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

ROSS JOHNSON  
Attorney at Law  
Lewis, Slovak, Kovacich & Marr, PC  
P.O. Box 2325  
Great Falls, MT 59403

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

MARK THIESZEN (9:05 a.m. - 12:10 p.m.)  
Attorney at Law  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, MT 59701

SHANNON WELLS STEVENSON  
Attorney at Law  
Davis Graham & Stubbs, LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202

Also present:  
Joyce Duxbury

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

BRUCE DUXBURY

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 24, 2013

Page 3

INDEX

Witness: Page:

BRUCE DUXBURY

Examination by Ms. Stevenson 5

EXHIBITS

NO. PAGE DESCRIPTION

1	38	Aerial color photocopy
2	38	Soil Sample Location Map
3	86	07/28/95 Tuss letter
4	96	02/21/96 Indenture
5	98	07/09/96 Development Permit
6	98	07/09/96 Building Permit
7	99	Water Quality Division lot map
8	103	Color photocopies
9	103	Color photocopies
10	103	Color photocopies
11	104	07/15/03 First American title insurance
12	106	04/23/07 appraisal
13	110	2010 loan application
14	116	State Farm Insurance Renewal Certificate
15	117	07/25/02 letter to Duxburys
16	118	07/30/02 Access Agreement
17	119	Soil-sampling results
18	124	06/10/08 Harbert letter to Duxburys

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

BRUCE DUXBURY

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 24, 2013

Page 4

EXHIBITS (continued)

NO. PAGE DESCRIPTION

19	124	06/11/08 Access Agreement
20	127	09/18/08 Harbert letter to Duxburys, attachment
21	128	04/02/10 Duaine letter to Duxburys, attachment
22	152	Answers to first set of discovery
23	152	Answers to second set of discovery

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00042

1 nothing to me I mean they're numbers, but I don't know  
 2 what they mean  
 3 (Document marked Deposition  
 4 Exb 21 for identification )  
 5 BY MS. STEVENSON  
 6 Q Mr. Duxbury, Exhibit 21 is a letter to you and  
 7 Mrs. Duxbury from the Montana Bureau of Mines and Geology  
 8 reporting results from sampling on your domestic well. Is  
 9 this the Montana Tech sampling that you're thinking of?  
 10 A Yeah, yes  
 11 Q Do you recall requesting Montana Tech to come  
 12 and sample your well?  
 13 A No They, somehow or another, got ahold of  
 14 us I don't know how they did, but they did  
 15 Q They requested to sample your well?  
 16 A Right  
 17 Q And you gave them access to do that?  
 18 A Yes  
 19 Q In the letter, the Montana Bureau of Mines and  
 20 Geology says  
 21 The arsenic concentration in this sample was  
 22 2.61 micrograms per liter, which is well below the EPA  
 23 drinking water standard of 10 micrograms per liter.  
 24 Do you see that?  
 25 A Yeah

1 Q Did you understand that to report to you that  
 2 your water was safe to drink?  
 3 A They said it was. If it was below that, I  
 4 figured it was.  
 5 Q Did you have any reason to question the  
 6 results reported by the Montana Bureau of Mines and  
 7 Geology?  
 8 A No, I'm not qualified to do that.  
 9 Q Do you believe that your water was safe to  
 10 drink?  
 11 A To the best of my knowledge. I haven't died  
 12 today yet, so I guess it is.  
 13 Q What are you seeking as a result of this  
 14 lawsuit?  
 15 A To clean up the ground  
 16 Q And what in the ground do you think needs to  
 17 be cleaned up?  
 18 A The whole outer perimeter of where all that  
 19 stuff sat.  
 20 Q Those wastes that you had described earlier in  
 21 the deposition?  
 22 A Right, the whole ground area, the whole thing  
 23 be cleaned up, yeah.  
 24 Q The bricks and the gray-and-blue material?  
 25 A The whole area, period. If it's there, what

1 else is there? I mean I'm not -- like I say, just to have  
 2 it cleaned up, the whole area.  
 3 Q And why do you want that material cleaned up?  
 4 A Because of the sampling we got from these  
 5 guys.  
 6 Q Okay. So when you got sampling from your  
 7 lawyers, that made you want something cleaned up at your  
 8 property?  
 9 A Well, I -- yes.  
 10 Q Did you want anything cleaned up before you  
 11 got that sampling?  
 12 A I would like to, yeah.  
 13 Q And why do you want it cleaned up?  
 14 A Because what's on the property shouldn't be  
 15 there. I didn't put it there.  
 16 Q Was it there when you bought the property?  
 17 A To the best of my knowledge, it was, yeah.  
 18 Q Is it interfering with your ability to use  
 19 your property?  
 20 A Well, it depends on how you -- if I was going  
 21 to grow a garden in it, if I was going to grow a crop in  
 22 it, if I was going to go out there and -- yes; yes, it  
 23 would be.  
 24 Q Has anybody told you that you would not be  
 25 able to grow a garden or crops out there if your property

1 wasn't cleaned up?  
 2 A Well, I don't know. I know nothing will grow  
 3 there unless you took something out and put new topsoil or  
 4 some different kind of soil in it.  
 5 Q The soil out there isn't appropriate to grow  
 6 stuff in?  
 7 A Right.  
 8 Q And is that related to environmental  
 9 contamination or is that just the nature of the soil?  
 10 MR. JOHNSON: Objection; calls for  
 11 speculation.  
 12 THE WITNESS: To my knowledge, I don't know.  
 13 I'm not a -- there's some reason why it ain't there, why  
 14 it can't grow. I couldn't tell you. I didn't do the soil  
 15 sampling. You know, what, what's in the soil, why it  
 16 won't grow, if it's, you know, if it's naturally or if  
 17 it's some contamination from whatever, I don't know.  
 18 Q (By Ms. Stevenson) Have you ever tried to  
 19 grow anything in the outer area of your yard that's not  
 20 irrigated?  
 21 A No, because I know it won't grow anyway.  
 22 Q Why do you think it won't grow?  
 23 A Because you can look at the ground, and  
 24 nothing grows there. There's these patches of weeds and  
 25 very, very little grass. There's more grass than it's

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al ) Cause No DV-08-173  
Plaintiffs, )  
v. )  
BP AMOCO CORPORATION, et al, )  
ATLANTIC RICHFIELD COMPANY, )  
et al, )  
Defendants )

DEPOSITION OF JUDY MINNEHAN

Taken at

The Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
January 30, 2013  
12:35 p.m.

JUDY MINNEHAN

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 30, 2013

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS

ROSS JOHNSON

Attorney at Law

Lewis, Slovak & Kovacich, PC

P.O. Box 2325

Great Falls, MT 59403

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY

MARK THIESZEN

Attorney at Law

Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, MT 59701

EMILY DROLL

Attorney at Law

Davis Graham & Stubbs, LLP

1550 Seventeenth Street, Suite 500

Denver, CO 80202

Also present

Ted Minnehan

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

JUDY MINNEHAN

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 30, 2013

Page 3

INDEX

Witness: Page:

JUDY MINNEHAN

Examination by Ms. Droll . . . 4

EXHIBITS

NO.	PAGE	DESCRIPTION
24	65	Oppor Day flyer

JUDY MINNEHAN

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 30, 2013

Page 4

JUDY MINNEHAN  
JANUARY 30, 2013; BUTTE, MONTANA  
---

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Judy Minnehan was taken at the time and place and with the appearances of counsel hereinbefore noted before Jonny B. Nordhagen, Court Reporter - Notary Public for the State of Montana.

It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had:

JUDY MINNEHAN,  
having been called as a witness by the  
defendant, being first duly sworn, was  
examined and testified as follows:

EXAMINATION

BY MS. DROLL:

Q. Good morning. My name is Emily Droll. I'm an attorney for Atlantic Richfield.

Can you please state your full name for the record?

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00044

1 A. Yes.

2 Q. What specifically are you worried about?

3 MR. JOHNSON: Objection; foundation.

4 THE WITNESS: Just whatever arsenic does to  
5 you. I'm not sure. I know it kills you.

6 Q. (By Ms. Droll) Have you or anyone else living  
7 in your home had any illnesses or health conditions that  
8 you believe are related to environmental contamination?

9 MR. JOHNSON: The complaint doesn't allege  
10 any.

11 THE WITNESS: Not that I'm aware of.

12 Q. (By Ms. Droll) Do you smoke cigarettes?

13 A. I don't.

14 Q. Have you ever smoked cigarettes?

15 A. Years ago, from the time I was 16 until maybe  
16 35.

17 Q. On average, how many cigarettes did you smoke  
18 a day during that time period?

19 A. Probably five a day, that's the most.

20 Q. Have you ever used any other type of tobacco  
21 products?

22 A. No.

23 Q. How did you come to find out about this  
24 lawsuit and join as a plaintiff?

25 A. A meeting.

1 Q. A meeting at Fairmont?

2 A. Yes.

3 Q. Why did you decide to join as a plaintiff?

4 A. After the meeting was over with, I decided I'd  
5 go for it and see.

6 Q. Because you were concerned about your  
7 property?

8 A. Yes.

9 Q. What do you hope to achieve through this  
10 lawsuit?

11 A. Get the dirt and the water cleaned so that  
12 there's no arsenic in either one or anything wrong with it  
13 in that way.

14 Q. Does every molecule of contamination have to  
15 be removed before you'd be satisfied with your property?

16 MR. JOHNSON: Objection; foundation.

17 THE WITNESS: I would just go for it, whatever  
18 the person that was doing the -- taking -- putting the new  
19 dirt, and everything, thought it should be and wanted.

20 Q. (By Ms. Droll) And you would go by an  
21 expert's opinion on that?

22 A. Yes, from our -- you know, whoever they hired.

23 Q. Whoever your lawyers hired?

24 A. I don't know if it would be the lawyers or  
25 whoever the group hired, whatever, to clean it up.

1 Q. Are you seeking through this lawsuit to have  
2 Atlantic Richfield connect you to the Anaconda public  
3 water system?

4 A. Not necessarily.

5 Q. Are you seeking through this lawsuit to have  
6 Atlantic Richfield buy you out of your property?

7 A. No.

8 Q. Are you seeking money damages through this  
9 lawsuit?

10 A. Seeking to get the dirt and the water cleaned.

11 Q. In addition to getting the dirt and water  
12 cleaned, are you seeking money damages?

13 A. Whatever it takes.

14 Q. Are you seeking an amount of money beyond what  
15 it takes to clean your property?

16 MR. JOHNSON: Objection, Counsel. She's  
17 already testified to this.

18 THE WITNESS: I don't know.

19 Q. (By Ms. Droll) Have you incurred any personal  
20 expenses for testing or cleanup on your property?

21 A. No.

22 Q. You agree that Anaconda's mining and smelting  
23 operations have been shut down for some time now?

24 A. Yes.

25 Q. Since the early 1980s?

1 A. Yes.

2 Q. You agree that any mining and smelting waste  
3 that you allege to be on your property came onto your  
4 property awhile ago, by the time the smelter shut down?

5 MR. JOHNSON: Objection; foundation.

6 THE WITNESS: I don't know.

7 Q. (By Ms. Droll) Do you believe the area  
8 generally around Anaconda and Opportunity looks better  
9 than it did 10 or 15 years ago?

10 A. Yes.

11 Q. How so?

12 A. There's flowers in the fountains, and stuff  
13 like that.

14 Q. More vegetation?

15 A. Yes.

16 Q. More wildlife, as well?

17 A. I don't know about that. I don't hunt, or  
18 nothing, so I'm not sure on that.

19 Q. What about the Warm Springs Ponds? Do you  
20 spend any time in that area?

21 A. No.

22 Q. Do you know who Frank Day is?

23 A. No.

24 Q. Do you know who Shannon Dunlap is?

25 A. I know that name from one of the papers, or

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al., )  
Plaintiffs, )  
vs ) CAUSE NO. DV-08-173  
BP AMOCO CORPORATION, et al., )  
ATLANTIC RICHFIELD COMPANY, et al., )  
Defendants )

DEPOSITION OF LINDA M. EGGEN

Taken at

Poore, Roth & Robinson, P.C.  
1341 Harrison Avenue  
Butte, Montana

February 19, 2013

1:11 p.m.

LINDA EGGEN

CHRISTIAN, vs. BP AMOCO, et al.

February 19, 2013

Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

MONTE D. BECK  
Attorney at Law  
BECK & AMSDEN, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, Montana 59715

FOR THE DEFENDANTS:

MARK THIESZEN  
Attorney at Law  
POORE, ROTH & ROBINSON, P.C.  
1341 Harrison Avenue  
Butte, Montana 59701

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

LINDA EGGEN

CHRISTIAN, vs. BP AMOCO, et al.

February 19, 2013

Page 3

1	Aerial photograph, 109 South Hauser	12
2	Aerial photograph, 107 South Hauser	12
3	Abstract of Title	25
4	Decree Quieting Title of Land	27
5	Mortgage - William Yelsa, 11/9/1949	28
6	Daly Bank and Trust Company of Anaconda, showing that mortgage was fully paid, 11/9/1949	29
7	Loan document, People's Bank of Deer Lodge, 12/31/1987	32
8	Notice of Application for Tax Deed, 7/15/1974	33
9	Affidavit of Helen L. Lovell - Publication, 7/23/1976	34
10	Letter to William Yelsa from Michael McKeon, 6/4/1979	35
11	Indenture, 1/3/1984	36
12	Letter to Bill and Maurine Yelsa from Atlantic Richfield Co., w/Analytical Results from Soil Sampling, 7/6/2009	62
13	Letter to Resident from University of Cincinnati, 7/27/1993	64
14	Letter to Opportunity Residents from Atlantic Richfield Co., 8/1/2005	64
16	Anaconda Area Residential Soil Sampling 2002	65
17	"Your Help is Needed" (OCPA)	66
18	Packet of photographs	74
19	4 photographs	74
20	Packet of photographs - 000196-000222	74
21	3 photographs	74
22	Soil Sample Location Map, 109 South Hauser	93

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

LINDA EGGEN

CHRISTIAN, vs. BP AMOCO, et al.

February 19, 2013

Page 4

1 BE IT REMEMBERED THAT, pursuant to notice, the  
2 deposition of LINDA M. EGGEN was taken at the time and  
3 place and with the appearances of counsel hereinbefore  
4 noted before Cheryl Romsa, Notary Public for the State of  
5 Montana.

6 WHEREUPON, the proceedings were had as follows:  
7 LINDA M. EGGEN,  
8 called as a witness, having been first duly sworn,  
9 testified upon her oath as follows

10 EXAMINATION

11 BY MR. THIESZEN:

12 Q Good afternoon. I'm Mark Thieszen, and I'm an  
13 attorney here at Poore, Roth & Robinson. I'm here on  
14 behalf of Atlantic Richfield Company, or ARCO, and this is  
15 just our opportunity to ask you some questions. Before we  
16 get going, can you state your full name and spell your  
17 last name for the record?

18 A Linda Maurine Eggen, E-G-G-E-N.

19 Q And have you had any other names that you've gone  
20 by?

21 A Well, before I was married, it was Hamry.

22 Q So it was Linda Marianne Hamry previously?

23 A Linda Maurine Hamry.

24 Q Maurine. My bad.

25 Have you previously been deposed at all or

NORDHAGEN COURT REPORTING

1-800-823-2083

QA@BRESNAN.NET

1 of years.

2 Q. Was that prior to you moving onto the property?

3 A. Yes.

4 Q. Did you or your sister smoke?

5 A. I smoked for -- My sister never smoked. I smoked  
6 for probably, I don't know, I'm thinking maybe almost  
7 ten years.

8 Q. And when was that?

9 A. Well, from the time I was in college until a  
10 couple years before I had my first child, so that would  
11 have been the early '70s, I guess.

12 Q. And that was after you moved away to college?

13 A. Yeah.

14 Q. And approximately how much did you smoke a day?

15 A. Oh, less than a pack a day anyway.

16 Q. Did Bill or Maurine use any other tobacco  
17 products, to your knowledge?

18 A. I think Bill chewed for a while, come to think  
19 about it. I'd forgotten about that, but I think he did  
20 chew tobacco for a while.

21 Q. Do you have any idea how long or how much?

22 A. No. It was after I moved away, so...

23 MR. BECK: I'm going to object to all these  
24 questions on privacy grounds; that this has nothing to do  
25 with this lawsuit.

1 Q. (By Mr. Thieszen) Have you communicated with any  
2 others in the Opportunity area about the lawsuit?

3 A. No.

4 Q. As a representative of Bill's estate, what do you  
5 hope to achieve through this lawsuit?

6 A. Well, I would like to see the property cleaned  
7 up, so that if I rented it to somebody, I wouldn't have to  
8 feel like they were going to maybe get sick from it.

9 Q. So you want it cleaned up so it's safe?

10 A. Uh-huh.

11 MR. BECK: Is that a yes?

12 THE WITNESS: That's a yes. Yes.

13 Q. (By Mr. Thieszen) How will you know when the  
14 property is safe?

15 A. Well, I think that when it's back to its original  
16 condition, it should be safe.

17 Q. Do you know what its original condition was?

18 A. Well, I would think that it would have been just  
19 nice, clean dirt originally.

20 Q. Are you seeking to recover any money or monetary  
21 damages in addition to any cleanup that's done?

22 A. Mostly, I think it just needs to be cleaned up.

23 Q. Are you seeking, through this lawsuit, to have  
24 Atlantic Richfield buy you out of the property, buy the  
25 estate out of the property?

1 A. I hadn't really thought about -- I mean, at the  
2 moment, I'm thinking about the property as maybe being  
3 income for my mom and being able to rent it, so I hadn't  
4 thought about selling the property, to tell you the truth.

5 Q. Is what the Environmental Protection Agency has  
6 to say about the condition of the property relevant to you  
7 in determining whether it's safe?

8 A. Probably not.

9 Q. And why not?

10 A. Because I think that, you know, all these numbers  
11 that they pick are sort of arbitrary numbers. How do they  
12 know that 250 parts per million are safe, you know? I  
13 would think that maybe it would be better if there weren't  
14 any arsenic there, or any lead or any of the other stuff,  
15 actually.

16 Q. And why do you think that?

17 A. Well, it just stands to reason. I mean, are you  
18 telling me that you would be happy to live on a piece of  
19 property as long as the arsenic levels are low enough?

20 Q. Well, I do live in Butte.

21 What about the Montana Department of Environmental  
22 Quality; is what they have to say regarding contaminants  
23 on your property and whether they're safe relevant to your  
24 consideration of whether it's safe?

25 A. I don't know what they would have to say, so I

1 can't answer your question.

2 Q. If they communicated with you, is that a source  
3 that you would consider?

4 MR. BECK: I think she asked and answered that,  
5 but maybe she didn't.

6 THE WITNESS: I think what I'm saying is that I  
7 just want to know that the property is clean, that it's  
8 back to its natural state, its original condition.

9 Q. (By Mr. Thieszen) How will you know when it's  
10 back to its original condition?

11 A. Well, I suppose they could do those soil samples  
12 again and it would come up negative.

13 Q. So there wasn't any arsenic or lead or zinc or  
14 copper on the property originally?

15 A. I don't know. I don't have soil samples from  
16 back then.

17 Q. Unfortunately, we don't either, I don't think.

18 Do you know who Frank Day is?

19 A. I read in there that he was at one time the  
20 manager of the Anaconda Company, I guess. Is that it?

21 Q. Have you ever spoken to him?

22 A. No.

23 Q. Do you know if Bill or Maurine ever spoke with  
24 him?

25 A. I don't have any knowledge of that; no.

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173  
Plaintiffs,  
v.  
BP AMOCO CORPORATION, et al.  
ATLANTIC RICHFIELD COMPANY, et al.,  
Defendants

DEPOSITION OF BILL FIELD

Taken at:

The Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
December 5, 2012  
8:30 a.m.

BILL FIELD

CHRISTIAN, et al. vs. BP AMOCO, et al.

December 5, 2012

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

JUSTIN P. STALPES  
Attorney at Law  
Beck & Amsden, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, MT 59715

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

T LEE BRUNER  
Attorney at Law  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, MT 59701  
  
SHANNON WELLS STEVENSON  
EMILY DROLL  
Attorneys at Law  
Davis Graham & Stubbs, LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202

Also present:  
Chris Field

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

BILL FIELD

CHRISTIAN, et al. vs. BP AMOCO, et al.

December 5, 2012

Page 3

INDEX

Witness: Page:

BILL FIELD

Examination by Ms. Stevenson 4

EXHIBITS

NO. PAGE DESCRIPTION

1	48	Responses to first set of discovery
2	49	Color aerial photocopy
3	61	09/22/95 Warranty Deed
4	50	30/12/83 Property Deed
5	50	Soil Sample Location Map
6	97	02/15/12 Icopini letter to Field, attachment
7	114	01/10/84 title insurance policy
8	114	09/22/95 title insurance policy
9	118	Responses to second set of discovery
10	114	Color photocopies
11	118	Answers to first set of interrogatories (Case No. CV-86-45-BU-JFB)
12	123	Answers to second set of interrogatories (Case No. CV-86-45-BU-JFB)
13	123	12/20/95 property appraisal
14	127	06/30/98 property appraisal

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

BILL FIELD

CHRISTIAN, et al. vs. BP AMOCO, et al.

December 5, 2012

Page 4

BILL FIELD

DECEMBER 5, 2012; BUTTE, MONTANA

---

BE IT REMEMBERED THAT, pursuant to notice, the deposition of Bill Field was taken at the time and place and with the appearances of counsel hereinbefore noted before Jonny B. Nordhagen, Court Reporter - Notary Public for the State of Montana.

It was further stipulated and agreed by and between counsel for the respective parties that this deposition was taken pursuant to the Montana Rules of Civil Procedure.

The following proceedings were had:

BILL FIELD,

having been called as a witness by the defendant, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. STEVENSON:

Q. Good morning, Mr. Field. Let me introduce myself again for the record. I'm Shannon Stevenson. I'm a lawyer, and I represent Atlantic Richfield and some of

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00048

1 Q. Why are you concerned about health effects  
2 from contamination on your property?  
3 MR. STALPES: Objection. It misstates the  
4 testimony.  
5 Go ahead and answer that question.  
6 THE WITNESS: For the future.  
7 Q. (By Ms. Stevenson) And I'm trying to  
8 understand what you're saying. Are you worried that  
9 contamination is going to come onto your property?  
10 A. It's already there.  
11 Q. Are you worried about current exposure to  
12 contamination on your property and it affecting your  
13 health?  
14 A. Yes.  
15 Q. What have you done about those concerns?  
16 A. I hired a lawyer.  
17 Q. Have you talked to any doctor about those  
18 concerns?  
19 A. No.  
20 Q. Have you talked to any representative from any  
21 health agency about those concerns?  
22 A. No.  
23 Q. Has anybody told you that you should be  
24 concerned about health issues related to any potential  
25 contamination on your property?

1 A. No.  
2 Q. Do you have any plans to investigate your  
3 health concerns about any contamination on your property?  
4 A. No.  
5 Q. Have you done any independent research at the  
6 library or on the internet or elsewhere about your  
7 concerns, any health concerns you have related to  
8 contamination on your property?  
9 A. No.  
10 Q. Has your wife done any of those things?  
11 A. No.  
12 Q. Have you talked with anyone about your health  
13 concerns related to contamination on your property?  
14 A. No.  
15 Q. Have you changed the way that you use your  
16 property in any way because of your health concerns about  
17 potential contamination on your property?  
18 A. No.  
19 Q. What do you want to achieve through this  
20 lawsuit?  
21 A. That my property is cleaned up of the  
22 hazardous materials, pollutants.  
23 Q. Is it important to you that your property be  
24 cleaned up to the point that it is safe for you to use?  
25 MR. STALPES: Objection; foundation and vague.

1 THE WITNESS: No.  
2 Q. (By Ms. Stevenson) You don't care whether  
3 it's safe or not?  
4 MR. STALPES: Objection; argumentative.  
5 THE WITNESS: It needs to be cleaned up to a  
6 point that it would have been prior to the pollutants  
7 being discharged by the Anaconda smelter to begin with.  
8 Q. (By Ms. Stevenson) So you want your property  
9 cleaned up as if the smelter had not been there?  
10 A. Exactly.  
11 Q. If the condition of the property before the  
12 smelter was there was something different than what was  
13 required for the property to be safe, which standard would  
14 you want?  
15 MR. STALPES: Objection; speculation, vague  
16 and confusing, foundation, argumentative.  
17 THE WITNESS: We would expect to have it to  
18 what was existing prior to smelter contamination.  
19 Q. (By Ms. Stevenson) And that would be more  
20 important to you than to know that your property was safe?  
21 MR. STALPES: Objection; argumentative and  
22 assumes a totally untrue hypothetical and false choice.  
23 THE WITNESS: Ask the question again, please.  
24 Q. (By Ms. Stevenson) It would be more important  
25 to you to know that your property was as it was before the

1 smelter existed than to know that your property was safe  
2 to use?  
3 MR. STALPES: Objection; leading, speculation,  
4 argumentative, foundation.  
5 THE WITNESS: I still don't know if I  
6 understand that, the way it's worded.  
7 Q. (By Ms. Stevenson) What if the condition of  
8 your property had higher levels of arsenic, say, before  
9 the smelter was there than the standard that it would be  
10 important for you to have for your property to be safe?  
11 Would you rather the property be in the condition it was  
12 before the smelter existed, or would you rather it be  
13 safe?  
14 MR. STALPES: Objection --  
15 THE WITNESS: Before the smelter existed --  
16 MR. STALPES: Hold on, let me get my objection  
17 on the record. That is a hypothetical question and is  
18 ridiculous, so I'm going to object to speculation,  
19 foundation, and argumentative.  
20 Go ahead, answer the question.  
21 MS. STEVENSON: Can you read the question  
22 back, Jonny, to make sure he understands it?  
23 (The record was read back as follows:  
24 "QUESTION: What if the condition of your  
25 property had higher levels of arsenic, say, before the

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A CHRISTIAN, et al ,  
Plaintiffs,  
vs Cause No DV-08-173

BP AMOCO CORPORATION, et al ,  
ATLANTIC RICHFIELD COMPANY, et al ,  
Defendants

DEPOSITION UPON ORAL EXAMINATION OF  
EDWARD L JONES

December 5, 2012  
1341 Harrison Ave  
Butte, Montana

Robyn M Ori, Official Court Reporter  
320 North Parkview Court  
Dillon, Montana 59725  
(406) 660-1000

EDWARD JONES CHRISTIAN, vs. BP AMOCO, et al. December 5, 2012  
Page 2

1 APPEARANCES OF COUNSEL  
2  
3 ATTORNEY APPEARING ON BEHALF OF THE PLAINTIFFS:  
4  
5 LINDSAY C. BECK, Esq  
6 Beck and Amsden  
7 1946 Stadium Dr., Ste 1  
8 Bozeman, MT 59715  
9  
10 ATTORNEY APPEARING ON BEHALF OF THE DEFENDANTS:  
11  
12 MARK E. CHAMPOUX  
13 Davis, Graham & Stubbs, LLP  
14 1550 17th Street, Suite 500  
15 Denver, CO 80202  
16  
17 PATRICK M. SULLIVAN  
18 Poore, Roth and Robinson, P.C.  
19 1341 Harrison Ave  
20 Butte, MT 59701  
21  
22  
23  
24  
25

NORDHAGEN COURT REPORTING 1-800-823-2083 QA@BRESNAN.NET

EDWARD JONES CHRISTIAN, vs. BP AMOCO, et al. December 5, 2012  
Page 3

1	INDEX OF EXHIBITS	
2		
3	NO. DESCRIPTION	REFERENCED
4		
5	1 Deed	23
6	2 Quit Claim Deed	25
7	3 Internet image of overhead view of property	40
8	4 Responses to Discovery Requests	60
9	5 Well Log Report	73
10	6 Addendum to Promissory Note and Credit Agreement	92
11	7 Insurance statement from Hartford	101
12	8 Access agreement	110
13	9 Photos	139
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

NORDHAGEN COURT REPORTING 1-800-823-2083 QA@BRESNAN.NET

EDWARD JONES CHRISTIAN, vs. BP AMOCO, et al. December 5, 2012  
Page 4

1 BE IT REMEMBERED THAT, the deposition of ED L.  
2 JONES, was taken at the time and place and with the  
3 appearances of counsel hereinbefore noted, before Robyn M.  
4 Ori, a Notary Public for the State of Montana.  
5  
6 The following proceedings were had  
7  
8 \* \* \* \* \*  
9  
10 EDWARD L. JONES,  
11 called as a witness herein, having been first duly sworn,  
12 was examined and testified as follows:  
13  
14 EXAMINATION  
15  
16 BY MR. CHAMPOUX  
17 Q Good morning, Mr. Jones. My name is Mark  
18 Champoux. I'm an attorney for Atlantic Richfield.  
19 Can you please state your full name for the record?  
20 A Edward L. Jones.  
21 Q Mr. Jones, you understand that you're  
22 here today because you filed claims against Atlantic  
23 Richfield?  
24 A That's right.  
25 Q And you understand, Mr. Jones, that this

NORDHAGEN COURT REPORTING 1-800-823-2083 QA@BRESNAN.NET

1 THE WITNESS: No.  
2 Q. (By Mr. Champoux) Do you smoke?  
3 A. No.  
4 Q. Have you ever smoked?  
5 A. Forty-five years ago.  
6 Q. When you were young?  
7 A. When the first boy was born, I quit.  
8 Q. How long had you been smoking before you  
9 quit?  
10 A. I quit when I was -- probably about five  
11 years, six years.  
12 Q. Have you ever used other tobacco  
13 products?  
14 A. No.  
15 Q. How did you come to find out about this  
16 lawsuit?  
17 A. Word of mouth. Somebody told me about  
18 it.  
19 Q. Do you know who it was?  
20 A. No, I don't. No, I can't think of who it  
21 was.  
22 Q. What did you do when you found out about  
23 the lawsuit?  
24 A. Well, I went to the meeting to see what  
25 it was about.

1 Q. Why did you go to the meeting?  
2 A. To see what they were going to talk  
3 about.  
4 Q. Is that a meeting at Fairmont?  
5 A. Yes.  
6 Q. Did your wife attend with you?  
7 A. No.  
8 Q. Why did you decide to join the lawsuit?  
9 A. I don't know. I can't remember why now.  
10 It was to see what the outcome was going to be.  
11 Q. Are you interested in knowing about the  
12 environmental conditions on your property?  
13 A. Yes.  
14 Q. Did you, at that time, end up calling the  
15 Atlantic Richfield or the EPA to come and have them  
16 test your property?  
17 A. No, I signed up with the suit.  
18 Q. Had you done that prior to the time you  
19 signed up for the suit?  
20 A. No.  
21 Q. What do you hope to achieve through this  
22 lawsuit?  
23 A. To get my land back to the original  
24 before the smelter started.  
25 Q. In what way?

1 A. Well, the arsenic level.  
2 Q. Why would you like the arsenic level to  
3 be as it was before the smelter existed?  
4 A. Why?  
5 Q. Uh-huh.  
6 A. Because it would be healthier.  
7 Q. You're worried about the health effects  
8 of any arsenic on your property?  
9 A. Well, I am now. I never realized it was  
10 that elevated or I probably would have done  
11 something a long time ago.  
12 Q. What would you have done a long time ago?  
13 A. Probably got ahold of ARCO.  
14 Q. Has anyone other than your attorneys told  
15 you what levels of arsenic may have existed on your  
16 property prior to the smelter's existence?  
17 A. No.  
18 Q. Has anyone other than your attorneys ever  
19 told you what levels of arsenic are considered safe?  
20 A. No. I never inquired about it 'til --  
21 what's safe and not so far.  
22 MS. BECK: And so, for the record, I have to object  
23 to the form of the question.  
24 Q. (By Mr. Champoux) Is it relevant to you  
25 to know what levels of arsenic the EPA considers

1 safe?  
2 A. I don't know how they could go about  
3 getting their standard or whatever is safe for them.  
4 I don't know what's safe. What do they call safe?  
5 I don't know.  
6 Q. Do you understand that there can be  
7 amounts of arsenic that exist that are not a threat  
8 to human health?  
9 MS. BECK: Objection, lack of foundation.  
10 THE WITNESS: I don't know. I wouldn't know that.  
11 Q. (By Mr. Champoux) You mentioned that you  
12 want the levels of arsenic to be as they existed  
13 prior to the smelter?  
14 A. Correct.  
15 Q. And so you understand that even that  
16 would involve still having certain levels of arsenic  
17 on your property; is that right?  
18 A. I don't know how they -- how it works for  
19 cleanup. I don't know.  
20 Q. Do you believe that your property once  
21 existed without any levels of arsenic?  
22 MS. BECK: Objection, foundation.  
23 THE WITNESS: I don't know.  
24 Q. (By Mr. Champoux) If the EPA were to  
25 tell you that testing on your property showed that

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al.,

Plaintiffs, )

-vs-

) Cause No

) DV-08-173

BP AMOCO CORPORATION, et al., )

ATLANTIC RICHFIELD COMPANY, )

et al., )

Defendants )

## DEPOSITION OF ROBERT PHILLIPS

On the 4th day of December, 2012,

beginning at 8 30 a.m., the deposition of  
ROBERT PHILLIPS, appearing at the instance of  
Defendants, was heard at the Offices of Poore,  
Roth & Robinson, 1341 Harrison Avenue, Butte,  
Montana, pursuant to the Montana Rules of Civil  
Procedure, before Lisa R. Lesofski, Registered  
Professional Reporter, Notary Public.

## A P P E A R A N C E S :

## A P P E A R I N G O N B E H A L F O F T H E P L A I N T I F F S :

LINDSAY C. BECK

Attorney at Law

Beck &amp; Amsden

1946 Stadium Drive, Suite 1

Bozeman, Montana 59715

## A P P E A R I N G O N B E H A L F O F T H E D E F E N D A N T S :

MARK CHAMPOUX

Attorney at Law

Davis Graham &amp; Stubbs

1550 Seventeenth Street, Suite 500

Denver, Colorado 80202

LEE BRUNER

Attorney at Law

Poore, Roth &amp; Robinson

1341 Harrison Avenue

Butte, Montana 59601

## A L S O P R E S E N T :

Antonette Phillips

## I N D E X

EXAMINATION: Page:  
By Mr. Champoux 5

EXHIBITS: Marked:

- 1 Warranty Deed, 6/1/1995, 17  
OPP-Phillips 000045
- 2 ALTA Owner's Policy Schedule A, 26  
OPP-Phillips 000049
- 3 Overhead Map, AROPP-PLMAPS 000021 30
- 4 Plaintiff's Responses to Atlantic  
Richfield Company's Second Set  
of Discovery Requests, 11/16/2012,  
OPP-Phillips 000052 58
- 5 Required Service Provider  
Disclosure Statement-Butte,  
Opp-Phillips 000086 72
- 6 Declarations, OPP-Phillips 000182 78
- 7 Letter, Phillips, 7/25/2002,  
AROPP00000464 91
- 8 Access Agreement, 8/2/2002,  
AROPP00000459 95
- 9 Diagram of Property, OPPPTS00000196 97
- 10 Analytical Results from Soil Sampling  
Conducted on Your Property,  
AROPP00000458 100
- 11 Color Photograph 200 Ashleigh 104
- 12 Color Photographs, AROPP-SOIL 004578 104
- 13 Letter, Ferry/Phillips, 4/13/2004,  
AROPP00000457 106
- 14 Letter, Harbert/Phillips, 6/10/2008  
AROPP00078086 108

## I N D E X (Continued)

EXHIBITS: Marked:

- 15 Access Agreement, 6/13/2008,  
AROPP00000453 109
- 16 Letter, Harbert/Phillips, 9/18/2008,  
OPP-Phillips 000042 110
- 17 Underwriter Quantitative Analysis  
Appraisal Report, 04/03/2001,  
OPP-Phillips 000081 128

WORD INDEX AT END OF TRANSCRIPT

1 A Fairmont.  
 2 Q And did your attorneys in this case attend  
 3 that meeting?  
 4 A They did.  
 5 Q Were they hosting the meeting?  
 6 A They did.  
 7 Q Why did you decide to attend that meeting?  
 8 A I had concerns as to the level of  
 9 contamination that may or may not exist on my  
 10 property.  
 11 Q Then why did you decide to join the  
 12 lawsuit as a plaintiff?  
 13 A Again, to determine the fact of the  
 14 presence of any contamination on the property.  
 15 Q So you joined the lawsuit in order to have  
 16 your property evaluated for the presence of any  
 17 environmental contamination?  
 18 A And any remediation that would be needed  
 19 as well, so...  
 20 Q Your purpose in joining the lawsuit then  
 21 was your interest in having your property evaluated  
 22 and remediated if necessary?  
 23 A If necessary.  
 24 Q Prior to the time you joined the lawsuit  
 25 as a plaintiff had anyone ever told you that there

1 was environmental contamination on your property?  
 2 A No.  
 3 MS. BECK: Objection, asked and answered,  
 4 foundation.  
 5 Q (By Mr. Champoux) What do you hope to  
 6 achieve through this lawsuit?  
 7 A To make sure that my property is clean and  
 8 safe for not only me but future generations of my  
 9 family that hopefully will one day own it.  
 10 Q Do you believe that your property is not  
 11 clean and safe currently?  
 12 A I've got concerns after seeing some of the  
 13 numbers from last night, yes.  
 14 Q Prior to seeing the numbers last night did  
 15 you believe your property was clean and safe?  
 16 A I believed it to be.  
 17 Q So the numbers that you saw last night is  
 18 the only basis for questioning whether your property  
 19 is clean and safe today?  
 20 MS. BECK: Objection, form.  
 21 A Well, the numbers have me concerned, yes.  
 22 Q (By Mr. Champoux) Is there any other  
 23 reason why you have those concerns today?  
 24 A No, I just want clean property, something  
 25 that I'm positive that are at levels that are what

1 they should be for property that existed prior to  
 2 the smelter.  
 3 Q Do you believe the levels that existed  
 4 prior to the smelter are clean and safe levels?  
 5 MS. BECK: Objection, foundation.  
 6 A I would presume so.  
 7 Q (By Mr. Champoux) But you're not really  
 8 sure one way or the other?  
 9 A I can't be sure.  
 10 Q What cleanup steps do you think should be  
 11 taken on your property?  
 12 MS. BECK: Objection, foundation.  
 13 A It depends on the level of contamination  
 14 they determine need to be remediated.  
 15 Q (By Mr. Champoux) As determined by who?  
 16 A Yet to be determined.  
 17 Q If the EPA told you that testing showed  
 18 your property was clean and safe would that satisfy  
 19 your concerns?  
 20 A No.  
 21 Q Do you have any reason to distrust what  
 22 the EPA deems to be clean and safe?  
 23 A Yes.  
 24 Q Why is that?  
 25 A Because they've had numbers that varied

1 way too often from different particulates, there is  
 2 no consistency. So I just want to restore that the  
 3 way it should be prior to the smelter.  
 4 Q Have you ever investigated the EPA  
 5 standards for what's considered clean and safe?  
 6 A No.  
 7 Q Has anyone other than your attorneys ever  
 8 told you that the EPA standards are not reliable?  
 9 A Not that I can recollect.  
 10 Q Are you seeking through this lawsuit to  
 11 have Atlantic Richfield connect your property to a  
 12 public water system?  
 13 MS. BECK: Objection, form, pleadings  
 14 speak for themselves.  
 15 A No.  
 16 Q (By Mr. Champoux) Are you seeking through  
 17 this lawsuit to have the EPA do something different  
 18 in the area than it's previously done in terms of  
 19 testing and cleanup?  
 20 MS. BECK: Same objection.  
 21 A I'm not interested in the EPA, I'm  
 22 interested in safe, clean property at levels it  
 23 should be prior to the smelter.  
 24 Q (By Mr. Champoux) And do you believe the  
 25 standard of clean and safe is equivalent to what

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al ) Cause No. DV-08-173  
Plaintiffs, )  
v. )  
BP AMOCO CORPORATION, et al. )  
ATLANTIC RICHFIELD COMPANY, )  
et al., )  
Defendants )

DEPOSITION OF ANDY GRESS

Taken at

The Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
January 29, 2013  
12:30 p.m.

ANDY GRESS

CHRISTIAN, et al vs. BP AMOCO, et al

January 29, 2013

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS

ROSS JOHNSON  
BEN A. SNIPES (2:27 p.m. - 3:00 p.m.)  
Attorneys at Law  
Lewis, Slovak & Kovacich, PC  
P.O. Box 2325  
Great Falls, MT 59403

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY

MARK THIESZEN  
Attorney at Law  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, MT 59701  
MARK CHAMPOUX  
Attorney at Law  
Davis Graham & Stubbs, LLP  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ANDY GRESS

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 29, 2013

Page 3

INDEX

Witness: Page:

ANDY GRESS

Examination by Mr. Champoux . . . 5

EXHIBITS

NO. PAGE DESCRIPTION

1	22	06/18/73 Indenture
2	28	12/30/88 Title
3	32	06/26/73 title insurance
4	35	Color aerial photocopy
5	57	Color photocopies
6	57	Color photocopies
7	60	10/15/99 Manson letter to Stash, attachments
8	65	09/20/99 Ashe Analytics Invoice
9	68	12/30/99 Ferry letter to Gress, attachments
10	69	12/28/99 Access Agreement, attachments
11	71	05/20/04 Birkenbuehl/Coleman letter to Gress
12	73	07/16/04 Birkenbuehl/Coleman letter to Gress
13	73	05/01/05 Access Agreement, attachment

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ANDY GRESS

CHRISTIAN, et al. vs. BP AMOCO, et al

January 29, 2013

Page 4

EXHIBITS (continued)

NO. PAGE DESCRIPTION

14	74	03/15/07 Scally letter to Gress, attachment
15	74	04/11/08 Access Agreement attachment
16	75	Laboratory Analytical Results

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00054

1 Q. Do you know whether your father ever consulted  
2 with a doctor or health professional about those concerns?  
3 A. I don't know.  
4 Q. Do you have any health issues that you believe  
5 are related to environmental conditions on your property?  
6 MR. JOHNSON: Objection; foundation.  
7 THE WITNESS: Not that I know of.  
8 Q. (By Mr. Champoux) To your knowledge, did your  
9 father have any health conditions that you believe are  
10 related to environmental conditions on the property?  
11 MR. JOHNSON: Same objection.  
12 THE WITNESS: I don't know. I don't know.  
13 Q. (By Mr. Champoux) Nothing you can think of?  
14 A. Uh-uh [negative].  
15 Q. Do you smoke?  
16 A. Yes.  
17 Q. How long have you smoked?  
18 A. Oh, since I was 14 - 15.  
19 Q. How many cigarettes a day do you smoke?  
20 A. Oh, I'm about a pack, a little under.  
21 Q. When you're at home, do you smoke inside the  
22 house or outside or both?  
23 A. Both.  
24 Q. Did your father smoke?  
25 A. He did years ago, and then he quit. He

1 probably didn't smoke the last 25 years of his life.  
2 Q. Do you know how your father came to find out  
3 about this lawsuit?  
4 A. Probably Serge Myers.  
5 Q. Why do you think that?  
6 A. Like I said before, they're friends and they  
7 always communicated, and stuff, so -- (pause.)  
8 Q. When did you find out about the lawsuit?  
9 A. Not long before my dad passed away.  
10 Q. And how did you find out about it?  
11 A. Through my dad. He mentioned that there was a  
12 joint lawsuit for cleanup, but I just kind of -- you know,  
13 that was just in discussion.  
14 Q. After your father passed, why did you decide  
15 to continue to pursue his claims in the lawsuit?  
16 A. Well, Serge talked me into it, and I feel it  
17 needs cleaned up.  
18 Q. Were you considering dropping out of the  
19 lawsuit?  
20 A. No.  
21 Q. What do you, as representative of your  
22 father's estate, hope to achieve through this lawsuit?  
23 A. To get everything cleaned up.  
24 Q. When you say "everything," what do you mean by  
25 that?

1 A. Well, just the whole acre itself, you know.  
2 Q. What kind of cleanup would you like to see  
3 done on your property?  
4 MR. JOHNSON: Objection; foundation.  
5 THE WITNESS: Whatever they do to clean up an  
6 area, you know, to that extent. I know other areas they  
7 cleaned up, and I'd want the same.  
8 Q. (By Mr. Champoux) And you've seen cleanup at  
9 other areas that you're talking about. Has that been like  
10 soil removal and being filled in with clean soil?  
11 A. Yes.  
12 Q. So would you be satisfied with removal of the  
13 surface soil on your property and replacement with clean  
14 soil?  
15 MR. JOHNSON: Objection; foundation.  
16 THE WITNESS: I don't know, whatever could be  
17 done.  
18 Q. (By Mr. Champoux) That's the kind of cleanup  
19 you're looking for, though?  
20 MR. JOHNSON: That's vague.  
21 Q. (By Mr. Champoux) Something along those  
22 lines?  
23 A. Yeah.  
24 Q. Are you seeking to recover any money in this  
25 lawsuit?

1 A. No.  
2 Q. Have you or your father personally spent any  
3 money out of pocket for testing or cleanup of  
4 environmental conditions on your property?  
5 A. I don't know -- I haven't, but I don't know if  
6 he did.  
7 Q. If the EPA conducted additional testing on  
8 your property and the results of that testing showed that  
9 the property was safe to use in every way, would that  
10 satisfy you?  
11 MR. JOHNSON: Objection. That's not relevant  
12 in this action. The EPA action levels are not relevant  
13 here.  
14 THE WITNESS: No.  
15 Q. (By Mr. Champoux) Why not?  
16 A. Because I feel it needs to be cleaned up.  
17 Q. Even if the levels of contaminants aren't a  
18 threat to health?  
19 MR. JOHNSON: Same objection, and asked and  
20 answered.  
21 THE WITNESS: Well, I think it's been shown  
22 that it is contaminated, so it needs to be cleaned up.  
23 Q. (By Mr. Champoux) Do you have any neighbors  
24 or friends, people you know in the area who are not  
25 participating in this lawsuit that you've spoken to about

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173

Plaintiffs,

v.

BP AMOCO CORPORATION, et al.,  
ATLANTIC RICHFIELD COMPANY,  
et al.

Defendants

DEPOSITION OF SERGE MYERS

Taken at:

The Law Offices of  
Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, Montana

January 23, 2013

8:30 a.m.

SERGE MYERS

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 23, 2013

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

MARK M. KOVACICH

ROSS JOHNSON

Attorneys at Law

Lewis, Slovak, Kovacich & Marr, PC

P.O. Box 2325

Great Falls, MT 59403

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY:

MARK THIESZEN

Attorney at Law

Poore, Roth & Robinson, PC

1341 Harrison Avenue

Butte, MT 59701

SHANNON WELLS STEVENSON

Attorney at Law

Davis Graham & Stubbs, LLP

1550 Seventeenth Street, Suite 500

Denver, CO 80202

Also present

Nancy Myers

NORDHAGEN COURT REPORTING 800-823-2083

QA@BRESNAN.NET

SERGE MYERS

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 23, 2013

Page 3

INDEX

Witness: Page:

SERGE MYERS

Examination by Ms. Stevenson 6

EXHIBITS

NO. PAGE DESCRIPTION

1	65	Aerial color photocopy, 6 South Hauser
2	65	Soil Sample Location Map, 6 South Hauser
3	81	Aerial color photocopy, 8 North Hauser
4	84	Soil Sample Location Map, 8 North Hauser
5	86	Aerial color photocopy, 10 North Hauser
6	86	Soil Sample Location Map, 10 North Hauser
7	101	Color photocopies, 6 South Hauser
8	101	Color photocopies, 6 South Hauser
9	101	Color photocopies, 6 South Hauser
10	101	Color photocopies, 8 North Hauser
11	101	Color photocopies, 8 North Hauser
12	101	Color photocopies, 10 North Hauser
13	101	Color photocopies, 10 North Hauser
14	101	Color photocopies, 10 North Hauser
15	104	08/18/04 Trustee's Deed, 8 North Hauser
16	105	1984 Bargain and Sale Deed, 10 North Hauser

NORDHAGEN COURT REPORTING 800-823-2083

QA@BRESNAN.NET

SERGE MYERS

CHRISTIAN, et al. vs. BP AMOCO, et al.

January 23, 2013

Page 4

EXHIBITS (continued)

NO. PAGE DESCRIPTION

17	106	10/29/85 sampling form, 6 South Hauser
18	112	8/28/04 ETR sampling results, 6 South Hauser
19	120	10/19/05 Ferry letter to Myers
20	122	11/08/05 Access Agreement, 6 South Hauser
21	123	11/22/05 Ferry letter to Myers, attachment
22	128	07/20/73 Indenture, 6 South Hauser
23	129	11/21/05 Access Agreement, 10 North Hauser, attachment
24	129	07/07/06 Ferry letter to Myers, attachment
25	132	04/20/06 sampling results
26	140	10/10/06 Ferry letter to Myers, attachment
27	141	04/03/06 handwritten note
28	143	04/06/06 Birkenbuehl/Coleman letter to Myers
29	145	04/10/06 Access Agreement, attachment
30	146	04/11/07 Kaye letter to Myers, attachments
31	157	04/20/07 sampling results

NORDHAGEN COURT REPORTING 800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00056

1 work was going to be completed in?

2 A. It was year after year, after year. It was  
3 just, you know, a continuation. They never finished when  
4 they said they were going to finish. They're still going  
5 to this day.

6 Q. And you think in those flyers, they made a  
7 representation like, "We will be done by 2010 or 2011"?

8 A. We thought the dust would be over by then,  
9 yes.

10 Q. And I think you said you thought the dust  
11 ended around 2010.

12 A. To the best of my recollection, yes.

13 Q. And you felt like there was a promise in these  
14 flyers that it would be over before that?

15 A. The construction cycle would be over before  
16 that, yeah, the reclamation.

17 Q. And as you sit here today, as I understand  
18 your testimony, you're not sure who exactly was making  
19 those representations.

20 A. I'm not for sure.

21 Q. All right. Besides the representations in the  
22 flyers about when the work on the ponds would be over, are  
23 there any other misrepresentations that you feel like  
24 anyone from Atlantic Richfield has made to you?

25 A. Yeah. We just want our yards cleaned, you

1 know.

2 Q. But my question is: Is there any  
3 misrepresentations that you feel like Atlantic Richfield  
4 or anyone from Atlantic Richfield has made to you?

5 A. Not that I can recollect.

6 Q. So what are you hoping to get out of this  
7 lawsuit?

8 A. My yard cleaned.

9 Q. Do you have any opinion about how your yard  
10 should be cleaned?

11 A. That's up to the experts. I can't -- I can  
12 only do a wheelbarrow full, and I'm in trouble.

13 Q. Has anybody ever -- any state or federal or  
14 local agency ever told you that your yard needed to be  
15 cleaned?

16 MR. KOVACICH: Objection. That's not relevant  
17 to the issues in this case.

18 THE WITNESS: I'm not for sure.

19 Q. (By Ms. Stevenson) Has anybody that you can  
20 think of ever told you that your yard needed to be  
21 cleaned?

22 A. I would say so, yes.

23 Q. Who?

24 A. Well, myself, because the levels are too high.

25 Q. And why do you think the levels are too high?

1 A. Just from what I've researched. I've looked  
2 at other places, what they've had their levels at, and my  
3 yard's dirty.

4 Q. If your yard gets cleaned up, what will you do  
5 differently with your property?

6 A. Well, to begin with, I'd be able to move some  
7 dirt if I wanted to. I mean I just, I'd feel like I was  
8 in a safer predicament.

9 Q. You would feel safer?

10 A. Yes.

11 Q. Do you have any health concerns based on any  
12 contamination in your yard or on your property?

13 A. Oh, I always --

14 MR. KOVACICH: Objection; vague.

15 Go ahead.

16 THE WITNESS: Yes.

17 Q. (By Ms. Stevenson) What are your health  
18 concerns?

19 A. What the contaminants could do to people;  
20 ourselves, myself, family, grandchildren, you know.

21 Q. Has anyone ever told you that you should be  
22 concerned about health-related issues with your property?

23 A. Yes. I know myself that I should be  
24 concerned.

25 Q. From the research that you've done yourself?

1 A. Yes.

2 Q. And I think we were talking about this  
3 relating to your soil. Is that fair to say?

4 A. The contaminants?

5 Q. Yes.

6 A. Yes.

7 Q. I think you said you are not concerned that  
8 your drinking water is unsafe right now. Is that true?

9 A. As of right now, true, but I -- well, we know  
10 that we live on an area that's contaminated aquifer.

11 Q. What aquifer are you talking about?

12 A. It would be the one up from the Yellow Ditch.

13 Q. And who told you that?

14 A. I believe there was a study done by the County  
15 that had a Mr. Myers doing the study. Jim Kuipers was  
16 associated with that.

17 Q. Do you have any reason to think that this  
18 aquifer is going to impact your groundwater?

19 MR. KOVACICH: Objection; foundation.  
20 Mr. Myers isn't qualified to give opinions on matters like  
21 that.

22 THE WITNESS: Well, I'm fearful.

23 Q. (By Ms. Stevenson) But why do you think that  
24 that is going to impact your groundwater?

25 A. Due to the fact it's impacted groundwater up

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al. Cause No. DV-08-173  
Plaintiffs,  
v.  
BP AMOCO CORPORATION, et al.,  
ATLANTIC RICHFIELD COMPANY, et al.,  
Defendants

DEPOSITION OF TONI ZIMMER

Taken at

The Law Offices of  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, Montana  
November 30, 2012  
12:45 p.m.

TONI ZIMMER

CHRISTIAN, et al. vs. BP AMOCO, et al.

November 30, 2012

Page 2

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

BEN A. SNIPES  
Attorneys at Law  
Lewis, Slovak, Kovacich & Marr, PC  
P.O. Box 2325  
Great Falls, MT 59403

FOR THE DEFENDANT ATLANTIC RICHFIELD COMPANY

JOHN P. DAVIS  
Attorney at Law  
Poore, Roth & Robinson, PC  
1341 Harrison Avenue  
Butte, MT 59701

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

TONI ZIMMER

CHRISTIAN, et al. vs. BP AMOCO, et al.

November 30, 2012

Page 3

INDEX

Witness: Page:  
TONI ZIMMER  
Examination by Mr. Davis . . . 5

EXHIBITS

NO.	DESCRIPTION
1	Buy-Sell Agreement
2	First American title insurance documents
3	07/02/01 Special Warranty Deed
4	12/03/03 Appraisal of Real Property
5	Color aerial photocopy
6	Color photocopies
7	Color photocopies
8	Color photocopies
9	Color photocopies
10	Anaconda Area Residential Soil Sampling
11	07/25/02 letter to Zimmer
12	08/01/02 Access Agreement
13	08/22/03 Ferriter/Coleman letter to Zimmer
14	05/04/04 Ferry letter to Zimmer
15	05/17/04 Access Agreement
16	08/18/10 Icopini letter to Rupp
17	Letters to Zimmer

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

TONI ZIMMER

CHRISTIAN, et al. vs. BP AMOCO, et al.

November 30, 2012

Page 4

EXHIBITS (continued)

NO.	PAGE	DESCRIPTION
18		Laboratory Analytical Reports
19		Understanding Your Property Assessment Notice

NORDHAGEN COURT REPORTING

800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00058

1 A. No.

2 Q. Have you talked to anybody at the county  
3 health department about your concerns about environmental  
4 conditions on your property?

5 A. No.

6 Q. Are you a smoker?

7 A. Not anymore.

8 Q. Okay. Did you smoke for a period of time in  
9 your life?

10 A. Yes.

11 Q. Approximately, how long and how much did you  
12 smoke?

13 A. Well, I know my husband thought it was like  
14 our mid 30s, but -- and I'm not sure, either, but I was  
15 thinking it was closer to early 30s, and we both quit at  
16 the same time. And I probably smoked about a pack a day,  
17 also.

18 Q. How did you come to find out about this  
19 lawsuit and decide to join this lawsuit?

20 A. Just because of my husband. You know, like  
21 the letters would come in, and I just would hand them to  
22 him. That's all the more I know.

23 Q. Okay. So is it fair to say your husband made  
24 the decision to join the lawsuit?

25 A. Yes.

1 Q. Have you had any communications with other  
2 property owners about this lawsuit?

3 A. No.

4 Q. What do you hope to achieve through this  
5 lawsuit?

6 A. Just that our place would be  
7 contaminated-free -- I mean, you know, it would be clean  
8 brought back to original

9 Q. Pre-mining/smeltering conditions, is that what  
10 you're looking for?

11 A. I guess it would be, because that would be  
12 clean, then.

13 Q. Are you seeking through this lawsuit to have  
14 Atlantic Richfield do any additional work on your property  
15 or any work on your property?

16 A. No.

17 Q. Do you have an understanding of when the  
18 mining and smelting activities near your property ceased?

19 A. I haven't -- no, I don't.

20 Q. Do you know who Shannon Dunlap is?

21 A. No.

22 Q. I take it, then, you've never spoken to him.

23 A. (Shaking head negatively.)

24 Q. Okay.

25 A. No.

1 Q. How about Frank Day? Do you know who Frank  
2 Day is?

3 A. No, I don't

4 Q. And I take it you've never spoken to Frank

5 Day.

6 A. No.

7 Q. Is it fair for me to say that, to your  
8 knowledge, no representative of Atlantic Richfield Company  
9 has ever misrepresented any facts to you?

10 A. That's correct, no.

11 MR. DAVIS: Have a good weekend.

12 MR. SNIPES: We'll reserve, read and sign

13 (The deposition concluded at

14 approximately 2:10 p.m.)

15 \*\*\*\*\*

1 STATE OF MONTANA )  
2 ss  
3 County of Silver Bow )

4 I, Jonny B. Nordhagen, Court Reporter - Notary  
5 Public in and for the County of Silver Bow, State of  
6 Montana, do hereby certify:

7  
8 That the witness in the foregoing deposition, Toni  
9 Zimmer, was by me first duly sworn according to law in the  
10 foregoing cause, that the deposition was then taken before  
11 me at the time and place herein named, that the deposition  
12 was reported by me in machine shorthand and later  
13 transcribed by computer, and that the foregoing sixty-two  
14 (62) pages contain a true record of the witness, all done  
15 to the best of my skill and ability

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 affixed my notarial seal this \_\_\_\_ day of \_\_\_\_\_,  
18 2012.

19  
20  
21  
22  
23 Jonny B. Nordhagen  
24 Notary Public for the State of  
25 Montana residing at Butte,  
Montana My commission  
(NOTARIAL SEAL) expires May 8, 2014

MONTANA SECOND JUDICIAL DISTRICT COURT  
SILVER BOW COUNTY

GREGORY A. CHRISTIAN, et al., )  
Plaintiffs, )  
vs ) CAUSE NO. DV-08-173  
BP AMOCO CORPORATION, et al., )  
ATLANTIC RICHFIELD COMPANY, et al., )  
Defendants )

DEPOSITION OF LEONARD J. MANN

Taken at

Poore, Roth & Robinson, P.C.  
1341 Harrison Avenue  
Butte, Montana

February 6, 2013  
10:28 a.m.

LEONARD MANN

CHRISTIAN, vs. BP AMOCO, et al.

February 6, 2013

Page 2

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

JUSTIN STALPES  
Attorney at Law  
BECK & AMSDEN, PLLC  
1946 Stadium Drive, Suite 1  
Bozeman, Montana 59715

FOR THE DEFENDANTS:

JONATHAN W. RAUCHWAY  
Attorney at Law  
DAVIS, GRAHAM & STUBBS LLP  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202

LEE BRUNER  
MARK THIESZEN  
Attorneys at Law  
POORE, ROTH & ROBINSON, P.C.  
1341 Harrison Avenue  
Butte, Montana 59701

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

LEONARD MANN

CHRISTIAN, vs. BP AMOCO, et al.

February 6, 2013

Page 3

INDEX

PAGE

LEONARD J. MANN:

Examination by Mr. Rauchway..... 4  
Examination by Mr. Stalpes..... 101

INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED
2	Appraisal for Norwest Mortgage as of 6/21/1999 for 304 South Hauser	26
3	Third Amended Complaint, 12/21/2012	42
4	OCPA Mailing List	46
5	Buy-Sell Agreement, 5/5/1999	58
6	Domestic Well Sampling Program Summary & Recommendations, Opportunity, Montana, 5/19/2003	62
7	Anaconda Area Residential Soil Sampling 2002	67
8	Letter from Atlantic Richfield Company to Opportunity Residents, 8/1/2005	71
9	OCPA Newsletter, 8/12/2005	73
10	Aerial view, 304 South Houser	80
11	Nine color photographs	83
12	Packet of color photographs	85
13	Montana Standard article: Anaconda slag in high demand, 9/26/2004	98

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

LEONARD MANN

CHRISTIAN, vs. BP AMOCO, et al.

February 6, 2013

Page 4

1 BE IT REMEMBERED THAT, pursuant to notice, the  
2 deposition of LEONARD J. MANN was taken at the time and  
3 place and with the appearances of counsel hereinbefore  
4 noted before Cheryl Romsa, Notary Public for the State of  
5 Montana

6 WHEREUPON, the proceedings were had as follows:

7 LEONARD J. MANN,

8 called as a witness, having been first duly sworn,  
9 testified upon his oath as follows:

10 EXAMINATION

11 BY MR. RAUCHWAY

12 Q. Good morning, Mr. Mann

13 A. Hello

14 Q. Please state your full name

15 A. Leonard James Mann

16 Q. Have you ever gone by any other names?

17 A. No

18 Q. What's your address, sir?

19 A. 304 South Hauser

20 Q. And how long have you lived there?

21 A. Since '99

22 Q. Are you the owner of that property?

23 A. Yes

24 Q. Have you had your deposition taken before?

25 A. No

NORDHAGEN COURT REPORTING 1-800-823-2083

QA@BRESNAN.NET

ED\_001802\_00007475-00060

1 Is whatever contamination that may be present on your  
2 property offensive to your senses?

3 MR. STALPES: Object to the form.

4 THE WITNESS: We're not noticing anything yet.

5 Q. (By Mr. Rauchway) Do you believe that Atlantic  
6 Richfield has interfered with your rights to use your  
7 property?

8 A. No.

9 Q. Do you find it intolerable to live on your  
10 property right now?

11 A. No.

12 Q. Have you experienced any physical discomfort,  
13 yourself, from the contamination that may be present on  
14 your property?

15 A. No.

16 Q. Why did you decide to sue Atlantic Richfield,  
17 Mr. Mann?

18 A. Because our ground is contaminated.

19 Q. And why do you believe Atlantic Richfield is to  
20 blame for that?

21 MR. STALPES: Objection; foundation.

22 THE WITNESS: They're the successor to the  
23 Anaconda Company.

24 Q. (By Mr. Rauchway) And you believe your property  
25 was contaminated by the Anaconda smelter?

1 A. Yes.

2 Q. Do you believe that contamination took place  
3 before you bought the property?

4 A. Yes.

5 Q. Have you done anything, since you filed the  
6 lawsuit in 2008, to protect yourself from the  
7 contamination you're alleging?

8 A. We're gathering information and learning what we  
9 can do.

10 Q. What are you hoping to achieve through this  
11 lawsuit?

12 A. Get our yard cleaned up to safe levels

13 Q. And how will you know that your yard is at a safe  
14 level?

15 MR. STALPES: Objection; speculation, foundation.

16 THE WITNESS: When I get a report that shows  
17 normal levels.

18 Q. (By Mr. Rauchway) So if you were to get a report  
19 from the EPA, or whatever responsible government agency,  
20 that says that of all the metals or whatever else in your  
21 soil are within the range of normal, would that satisfy  
22 you?

23 MR. STALPES: Objection; speculation and form.

24 THE WITNESS: It's possible.

25 Q. (By Mr. Rauchway) Are you hoping to get money

1 from Atlantic Richfield in this lawsuit?

2 MR. STALPES: Objection, the complaint speaks for  
3 itself

4 THE WITNESS: If I'm entitled to any legally,  
5 yes.

6 Q. (By Mr. Rauchway) If you don't get any money  
7 from Atlantic Richfield in this lawsuit, are you willing  
8 to spend your own money to clean up your yard to whatever  
9 level will satisfy you?

10 MR. STALPES: Objection, speculation

11 THE WITNESS: Yes, I am.

12 Q. (By Mr. Rauchway) How much would you be willing  
13 to spend on your yard?

14 MR. STALPES: Objection, speculation

15 THE WITNESS: I'm willing to spend my time and  
16 equipment to get 'er done

17 Q. (By Mr. Rauchway) If you had to spend, say,  
18 \$50,000 of your own money, would you do that?

19 MR. STALPES: Objection; argumentative, form,  
20 speculation

21 THE WITNESS: It's possible, yes.

22 Q. (By Mr. Rauchway) Have you spent any of your own  
23 money so far trying to clean up your property?

24 A. Yeah. Right. Like I say, we fertilized, sprayed  
25 for weeds, trimmed trees, will probably haul in more

1 fertilizer.

2 Q. I'm talking about to address the environmental --

3 A. Oh, okay.

4 Q. -- contamination you think is on your property

5 A. Would you please repeat the question?

6 Q. Sure. Have you spent any of your own money so  
7 far to try to clean up the environmental contamination you  
8 think is on your property?

9 A. No.

10 Q. Have you spent any of your own money to  
11 investigate the environmental contamination you think is  
12 on your property?

13 A. Yes.

14 Q. And how is that?

15 A. Well, for instance, today, I'm missing a day's  
16 pay by being here.

17 Q. So you've invested some of your time, is that  
18 what you're saying?

19 MR. STALPES: Objection, that misstates his  
20 testimony.

21 THE WITNESS: Yes. Time is money.

22 MR. RAUCHWAY: Let's take a few minutes. I think  
23 I'm fairly close.

24 MR. STALPES: Okay.

25 (A brief recess was taken.)

## 1.0 Overview of CERCLA and PRP Searches

### 1.1 Overview of CERCLA



The objective of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (see Chapter 1 References, p. 38) is to reduce and eliminate threats to human health and the environment posed by uncontrolled hazardous waste sites. To meet this objective, CERCLA created:

- a hazardous waste site response program; and
- a comprehensive liability scheme that authorizes the government to hold persons who caused or contributed to the release of hazardous substances liable for the cost or performance of cleanups.

In enacting CERCLA, Congress authorized the President or the delegated federal agency to draw funds from a revolving trust fund called the Hazardous Substance Superfund ("Superfund," "Trust Fund," or "Fund") to respond to releases or threatened releases of hazardous substances.<sup>1</sup>

CERCLA provides EPA with three basic options for cleaning up a hazardous waste site:

- Under CERCLA Sections 104 and 107, EPA can perform a response action at the site using Superfund money and recover response costs from potentially responsible parties (PRPs).
- Under CERCLA Section 106, EPA can order, or ask a court to order, PRPs to clean up the site.

<sup>1</sup> The petroleum and chemical feed stocks tax and the environmental income tax (EIT) along with funds from general revenues funded the Superfund. These taxes have not been levied since the end of 1995 when the taxing authority expired. The Superfund program is currently funded primarily through annual appropriations of general taxpayer dollars.

## Mark Kovacich

---

**From:** Rauchway, Jon <Jon.Rauchway@dgsllaw.com>  
**Sent:** Friday, May 31, 2013 11:36 AM  
**To:** 'Monte Beck'; Champoux, Mark; John Davis (jpd@prrlaw.com); Stevenson, Shannon  
**Cc:** Mark Kovacich; Dave Slovak; Lindsay Beck  
**Subject:** RE: Christian v ARCO

Monte:

Your second point asks for "color overhead Google photographs" for the 9 residential yard cleanups. The 9 ISWPs for those yards include property maps clearly showing the areas identified for cleanup. Additionally, Atlantic Richfield produced color overhead photographs of all the properties it sampled in this case, so you already have these documents. Many of them were marked as exhibits in the depositions of your clients. You can also find these same kinds of images online from Google Earth, [www.earth.google.com](http://www.earth.google.com).

As to your third point, provided your clients respond to the offers promptly, Atlantic Richfield's construction team believes it can complete most, if not all, of the remediation this construction season, i.e., before the ground freezes in the fall.

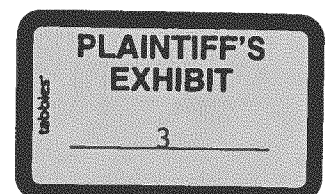
As to your fourth point, the details of the proposed yard cleanups (the same information as in the ISWPs for the pasture cleanups) are contained on the maps themselves. As with many of your questions, the differences between the formats of the yard and pasture cleanup plans is just that: format, not substance, and such differences are the results of EPA protocols. If your clients have specific questions about the proposed cleanups of their specific properties—e.g., what will be done about trees or other large plants, what will be done about vehicles or other large items on the property, etc.—those questions are best addressed by Atlantic Richfield's construction team, as discussed previously. The construction team tries to be very responsive to property owners' concerns and preferences on details of the cleanups.

As to your "individual property questions," many are not actually questions at all, but appear to be invitations to debate the wisdom or legality of EPA's selected remedy. E.g., your statement that "This proposal simply does not make common sense," and that arsenic concentrations below EPA's action level are "an unsafe, and in [y]our view, illegal, contamination level," and your request for an "explanation for the rationale for this remediation." I believe you resolved your questions about the Matthews property on your own. Again, to the extent your clients have specific questions about the details of the remediation, we are happy to answer them through the persons who will actually conduct the remediation, which would be much more productive than you and I debating EPA's remedy. If it is helpful, we can probably arrange for a representative from the construction team to attend all or part of your June 12 meeting and answer questions about the logistics of the cleanups.

As to the costs of these cleanups, it is unclear how that is relevant, especially when your clients have not told us whether they want these cleanups to take place. Moreover, I am not certain this information has even been compiled at this point.

Finally, as to settlement, we are willing to discuss settlement at any time, either within or outside the context of the court's mandatory settlement procedures. But we do not see any need to delay the cleanup of your clients' properties under the EPA-approved remedy to do that. Please let us know as soon as possible whether your clients will agree to the proposed cleanups.

Jon



Jonathan W. Rauchway  
**Davis Graham & Stubbs LLP**  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202  
Tel: 303.892.7216  
Fax: 303.893.1379  
Cell: 303.903.3298  
[jrauchway@dgsllaw.com](mailto:jrauchway@dgsllaw.com)  
[vcard](#)

*This email message, and its attachment(s), is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.*

*In accordance with applicable U.S. Treasury Regulations we inform you that, unless expressly stated otherwise, any advice contained in this communication and any attachment hereto cannot be used either (i) to avoid penalties imposed under the Internal Revenue Code or (ii) for promoting, marketing, or recommending any transactions or matters addressed by such advice.*

H.R. REP. 99-253(I), H.R. REP. 99-253, H.R. Rep. No. 253(I), 99TH Cong., 1ST Sess. 1985, 1986 U.S.C.A.N. 2835, 1985 WL 25943 (Leg.Hist.)

**\*\*2835 P.L. 99-499, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986**

**DATES OF CONSIDERATION AND PASSAGE**

House May 14, December 10, 1985; October 8, 1986

Senate September 26, 1985; October 3, 1986

House Report (Ways and Means Committee) No. 99-69,  
May 7, 1985 [To accompany H.R. 2005]

House Report (Energy and Commerce Committee) No. 99-253(I),  
Aug. 1, 1985 [To accompany H.R. 2817]

House Report (Ways and Means Committee) No. 99-253(II),  
Oct. 28, 1985 [To accompany H.R. 2817]

House Report (Judiciary Committee) No. 99-253(III),  
Oct. 31, 1985 [To accompany H.R. 2817]

House Report (Merchant Marine and Fisheries Committee) No.  
99-253(IV), Oct. 31, 1985 [To accompany H.R. 2817]

House Report (Public Works and Transportation Committee) No.  
99-253(V), Nov. 12, 1985 [To accompany H.R. 2817]

Senate Report (Environment and Public Works Committee) No. 99-11,  
Mar. 18, 1985 [To accompany S. 51]

Senate Report (Finance Committee) No. 99-73,  
May 23, 1985 [To accompany S. 51]

House Conference Report No. 99-962,  
Oct. 3, 1986 [To accompany H.R. 2005]

Cong. Record Vol. 131 (1985)

Cong. Record Vol. 132 (1986)

**Related Report:**

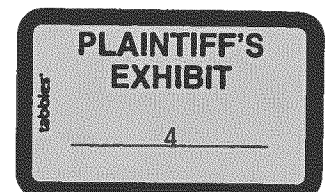
House Report (Science and Technology Committee) No. 99-255,  
Sept. 4, 1985 [To accompany H.R. 3065]

H.R. 2005 was passed in lieu of H.R. 2817 and S. 51 after amending its language to contain much of the text of H.R. 2817. The House Report to accompany H.R. 2817 (Parts I-V) is set out below and the House Conference Report and the Signing Statement by the President follows.

**HOUSE REPORT NO. 99-253(I)**

August 1, 1985

\*1 The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2817) to amend the Comprehensive Environmental \*\*2836 Response, Compensation, and Liability Act of 1980, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.



undertaking a remedial action at the site; and

filing of an action under section 106 of CERCLA by a potentially responsible party where such party has entered into a consent decree with EPA requiring such party both to undertake a remedial investigation and feasibility study at the site and to implement the remedial action decision of the Administrator following his review of the completed study.

The purpose of the Tauke-Richardson amendment is to prevent private responsible parties from filing dilatory, interim lawsuits which have the effect of slowing down or preventing EPA's cleanup activities. By limiting court challenges to the point in time when the agency has decided to enforce the liability of such private responsible parties, the amendment will ensure both that effective cleanup is not derailed and that private responsible parties get their full day in court to challenge the agency's determination that they are liable for cleanup costs.

\*267 The amendment also recognizes the full rights of affected citizens to obtain court review of the adequacy of the remedies selected by EPA at a site. It is the intention of the legislation to permit citizens to bring such challenges at the earliest opportunity without permitting such suits to delay or prevent ongoing cleanup work. Affected citizens should be able to file suit and obtain judicial review while there is still adequate time to require the agency to revise its response action plans to meet applicable legal requirements.

To eliminate unnecessary litigation, the Tauke-Richardson amendment establishes public participation procedures which will \*\*2942 allow all interested persons an effective opportunity to advise the Administrator concerning the nature and scope of the remedial action plans which will be formulated at the site, including notice and a reasonable opportunity for comment on the proposed remedial action plan.

The Tauke-Richardson amendment further clarifies the intent of current law that judicial review of agency actions shall be judged by the arbitrary and capricious standard normally applicable to final agency determinations under the Administrative Procedure Act.

Finally, the Tauke-Richardson amendment permits such parties to seek reimbursement from the fund for any response costs they have expended within 60 days after such parties have completed a response action pursuant to an order issued by the government. The amendment further provides that private parties subsequently found to have no liability for the response costs at issue may also receive compensatory damages.

## SECTION 114

### *Relationship to other law*

The section would repeal the provision of current law which preempts state taxing authority in certain circumstances.

## SECTION 115

### *Public health assessment and protection authorities*

The section would require that, within 6 months of the date of enactment of the legislation, the Administrator of the Agency for Toxic Substances and Disease Registry (hereinafter 'ATSDR Administrator') must prepare a list of at least 100 hazardous substances, pollutants and contaminants which the ATSDR Administrator determines pose the greatest risk to human health at National Priorities List sites. Within 24 months of the date of enactment, the ATSDR Administrator must add an additional 100 substances to the list. Within four years of the date of enactment, the ATSDR Administrator must prepare toxicological profiles of the first 100 listed substances at the rate of 25 per year and he must prepare profiles of the second 100 substances at the rate

H.R. Conf. Rep. No. 962, 99TH Cong., 2ND Sess. 1986, 1986 U.S.C.C.A.N. 3276, 1986 WL 31924, H.R. CONF. REP. 99-962 (Leg.Hist.)

**\*\*3276 P.L. 99-499, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986**

**DATES OF CONSIDERATION AND PASSAGE**

House May 14, December 10, 1985; October 8, 1986

Senate September 26, 1985; October 3, 1986

House Report (Ways and Means Committee) No. 99-69,  
May 7, 1985 [To accompany H.R. 2005]

House Report (Energy and Commerce Committee) No. 99-253(I),  
Aug. 1, 1985 [To accompany H.R. 2817]

House Report (Ways and Means Committee) No. 99-253(II),  
Oct. 28, 1985 [To accompany H.R. 2817]

House Report (Judiciary Committee) No. 99-253(III),  
Oct. 31, 1985 [To accompany H.R. 2817]

House Report (Merchant Marine and Fisheries Committee) No.  
99-253(IV), Oct. 31, 1985 [To accompany H.R. 2817]

House Report (Public Works and Transportation Committee) No.  
99-253(V), Nov. 12, 1985 [To accompany H.R. 2817]

Senate Report (Environment and Public Works Committee) No. 99-11,  
Mar. 18, 1985 [To accompany S. 51]

Senate Report (Finance Committee) No. 99-73,  
May 23, 1985 [To accompany S. 51]

House Conference Report No. 99-962,  
Oct. 3, 1986 [To accompany H.R. 2005]

Cong. Record Vol. 131 (1985)

Cong. Record Vol. 132 (1986)

**Related Report:**

House Report (Science and Technology Committee) No. 99-255,  
Sept. 4, 1985 [To accompany H.R. 3065]

**HOUSE CONFERENCE REPORT NO. 99-962**

October 3, 1986

\* \* \* \* \*

**\*183 \*\*0 JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE**

**SECTION 1—SHORT TITLE AND TABLE OF CONTENTS**



phases of the cleanup, such as subsurface cleanup, remain to be undertaken as part of the total response action. Similarly, if a response action is being conducted at a complex site with many areas of contamination, a challenge could lie to a completed excavation or incineration response in one area, as defined in a Record of Decision, while a pumping and treating response activity was being implemented at another area of the facility. It should be the practice of the President to set forth each separate and distinct phase of a response action in a separate Record of Decision document. Any challenge under this provision to a completed stage of a response action shall not interfere with those stages of the response action which have not been completed.

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants.

In new section 113(i) of CERCLA, the conference substitute adopts a modified version of the Senate provision that expressly provides for a right of intervention in actions commenced under the Solid Waste Disposal Act or CERCLA.

The conference substitute adopts new section 113(j) of the House amendment, which limits judicial review of the selection of a response action to the administrative record on which the selection was based. The substitute clarifies the language of the House amendment to provide that the otherwise applicable principles of administrative law will govern as to whether supplemental material may be considered by the court. The applicable standard of review is that of the House amendment, namely 'arbitrary and capricious or otherwise not in accordance with law.'

The conference substitute adopts new section 113(k) of the House amendment to require the President to promulgate regulations for the establishment of an administrative record, which is to form the basis for the selection of a response action. Until the promulgation of regulations under new section 113(k), the record shall consist of those materials developed under current procedures for selection of a response action. The record for a response action selected prior to implementation of these regulations shall consist of the record developed prior to such implementation. General principles of administrative law respecting such records are not affected by this provision. The conference substitute expressly provides for participation by potentially responsible parties and other citizens in the development of this record, as well as its public availability. In addition, **\*\*3318 \*225** the President is required to make reasonable efforts to identify and notify potentially responsible parties before selection of a response action, but neither this requirement nor other provisions of the paragraph in which it is contained are to be a defense to liability.

The conference substitute sets forth the agreement on reimbursement as section 106 of the substitute.

The conference substitute incorporates the provision of the Senate amendment which requires that whenever a suit is brought under CERCLA, notice of such suit must be provided to the Attorney General of the United States and the Administrator.

The conference substitute deletes the Senate provision regarding expedited judicial review of permitting, which was included in the Senate bill as new section 113(i) of the Act. Litigation regarding permits required under applicable Federal laws for facilities that are designed to treat or dispose of hazardous wastes, particularly those from the cleanup of Superfund sites, should be given priority treatment by the courts.

The conference substitute deletes the Senate provision which would have amended existing section 113(a) of CERCLA to provide for the selection of the circuit court of venue for actions under the Act.

## SECTION 114—RELATIONSHIP TO OTHER LAW

### STATE FINANCING

*Senate amendment*—The Senate amendment strikes subsection 114(c) which addresses the right of States to impose taxes for purposes already covered by CERCLA.

*House amendment*—The House amendment amends subsection 114(c) of CERCLA to allow States to require contribution to a fund whose purpose is to pay for costs of response or damage

IN THE SUPREME COURT OF THE STATE OF MONTANA  
CASE NO. 04-798

SUNBURST SCHOOL DISTRICT, NO. 2, et al.,

Plaintiffs/Respondents/Cross-Appellants,

v.

TEXACO, INC., et al.,

Defendants/Appellants.

On Appeal from the District Court for the Eighth Judicial District  
(The Honorable Thomas M. McKittrick)

BRIEF OF APPELLANTS

APPEARANCES:

Stanley T. Kaleczyc  
Browning, Kaleczyc, Berry  
& Hoven, P.C.  
139 North Last Chance Gulch  
P.O. Box 1697  
Helena, MT 59604-1698  
(406) 443-6820

Tom L. Lewis  
J. David Slovak  
Mark M. Kovacich  
Lewis, Slovak & Kovacich, P.C.  
P.O. Box 2325  
Great Falls, MT 59403  
(406) 761-5595

Laurence Janssen (admitted pro hac vice)  
Daniel R. Blakey (admitted pro hac vice)  
STEPTOE & JOHNSON LLP  
633 West Fifth Street - Suite 700  
Los Angeles, California 90071

*Attorneys for Appellees*

*Attorneys for Appellants*

APR 21 2005

PLAINTIFF'S  
EXHIBIT

6

reimbursement for remediation and thus the footnote reflects prior law. See id.: see also MCA § 75-10-724.

Moreover, this footnote permitted recovery of restoration costs required by a specific environmental law. Plaintiffs have not claimed that their remediation damages were compelled by any environmental law. On the contrary, they propose to ignore the statutory environmental scheme and the choices made to date by DEQ. They seek an award of restoration damages without reference to the environmental laws. This is contrary to the express holding of Burk Ranches. As we show below, neither an environmental statute nor the Montana Constitution authorizes a different result in this case.

**B. The Montana Statutory Scheme Precludes Remediation Damages**

The jury verdict giving remediation damages was inconsistent with CECRA, Montana's statute addressing potentially hazardous releases. Under that scheme, DEQ is authorized to determine the standard for cleanup and a plan for remediation. CECRA does not give private landowners, individually or collectively, control over remediation of a site subject to a DEQ order.

First, the State adopts water quality standards and sets maximum contaminant levels (MCLs) for groundwater. Further, the State classifies groundwater based on its potential uses, its natural dissolved-solids content, and

the nature of the contaminant(s). MCA § 75-5-301; Admin. R. Mont.

§ 17.30.1006.

Further, under CECRA, DEQ has comprehensive control over remedial plans. “Remedial action” is broadly defined to include everything from investigation to restoration to monitoring. See MCA § 75-10-701(20). DEQ can achieve remediation through one of three ways. It may take remedial action on its own and seek reimbursement. See MCA § 75-10-711. It may order a responsible person to undertake remedial action. Id. Or “[a]ny person may submit an application for the approval of a voluntary cleanup plan to the department,” MCA § 75-10-733, and seek reimbursement. MCA § 75-10-724. Wherever private parties are involved, CECRA provides specific criteria for public review and departmental approval. See, e.g., MCA § 75-10-713 (procedure for approval of orders on consent); MCA §§ 75-10-733, -736 (criteria for voluntary cleanup plans). Indeed, it is an overarching principle of CECRA, stated at its outset, that “a person who is not subject to administrative or judicial order may not conduct any remedial action in any facility that is subject to administrative or judicial order issued pursuant to this part without the written permission of the department.” See MCA § 75-10-706(3). Thus, although CECRA permits proposals for cleanup from a variety of sources, it requires departmental approval for each of them.